

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

Subscriptions and Distribution	Telephone:	(515)281-6766
	Fax:	(515)281-6625
KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
	Fax:	(515)281-5534

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The Iowa Administrative Code shall be cited as (agency identification number) IAC
(chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication
date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan. 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

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Wednesday, May 17, 2006

June 7, 2006

26

Friday, June 2, 2006

June 21, 2006

1

Friday, June 16, 2006

July 5, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
EDUCATIONAL EXAMINERS BOARD[282]		
Proof of legal presence, ch 7 IAB 5/10/06 ARC 5101B	Room 3 North, 3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 30, 2006 2:30 p.m.
Audit of renewal, 17.13 IAB 5/10/06 ARC 5100B	Room 3 North, 3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 30, 2006 2 p.m.
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Pupil transportation, 43.10, 43.15, 43.16, 43.41, 43.43, 43.44 IAB 4/26/06 ARC 5054B	State Board Room Grimes State Office Bldg. Des Moines, Iowa	May 19, 2006 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to ch 22; 23.1 IAB 4/12/06 ARC 5041B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	May 12, 2006 1 p.m.
Commercial septic tank cleaners, ch 68, 69.17 IAB 4/12/06 ARC 5042B	Room 606, Suite C Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	May 10, 2006 10 a.m.
	Delaware County Fairgrounds 200 E. Acers St. Manchester, Iowa	May 11, 2006 10 a.m.
	Public Library 120 E. Main Washington, Iowa	May 16, 2006 10 a.m.
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Report of changes, 79.14(11) IAB 4/26/06 ARC 5063B	Iowa Medicaid Enterprise 100 Army Post Rd. Des Moines, Iowa	May 17, 2006 2 p.m.
LABOR SERVICES DIVISION[875]		
Procedural rules; OSHA regulations, 1.102, 10.20, 26.1, 28.1 IAB 5/10/06 ARC 5084B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	May 31, 2006 2:30 p.m.
Wage collection payment, 35.1 to 35.5 IAB 5/10/06 ARC 5092B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 2, 2006 11 a.m. (If requested)
Elevator safety rules, adopt chs 65 to 70; amend chs 72, 73 IAB 5/10/06 ARC 5102B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 1, 2006 8 a.m.

Boiler and pressure vessel rules,
adopt chs 80 to 85; amend
chs 200, 201, 203 to 209
IAB 5/10/06 **ARC 5082B**

Capitol View Room
1000 E. Grand Ave.
Des Moines, Iowa

May 31, 2006
9 a.m.
(If requested)

Wrestling and boxing rules; special
inspectors, amendments to
chs 94 to 101, 202
IAB 5/10/06 **ARC 5085B**

Capitol View Room
1000 E. Grand Ave.
Des Moines, Iowa

May 31, 2006
1 p.m.
(If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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EDUCATIONAL EXAMINERS
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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt new Chapter 7, “Proof of Legal Presence,” Iowa Administrative Code.

The proposed chapter will promulgate rules that will address the procedural responsibilities of the Board in licensing applicants who are not U.S. citizens.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 30, 2006, at 2:30 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed rules before 4 p.m. on Friday, June 2, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These rules are intended to implement the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following new chapter is proposed.

CHAPTER 7

PROOF OF LEGAL PRESENCE

282—7.1(272) Purpose. This chapter outlines a uniform process for applicants and licensees of the board of educational examiners to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621).

282—7.2(272) Applicability.

7.2(1) Applicants and licensees who are U.S. citizens or permanent resident aliens may be requested to produce evidence of their lawful presence in the United States as a condition of initial licensure or license renewal. If requested, submission of evidence will be required once. Acceptable evidence (List A) is outlined in subrule 7.3(1).

7.2(2) Applicants and licensees residing in the United States, other than those described in subrule 7.2(1) above, may be requested to provide evidence of lawful presence in the United States at the time of initial licensure and with every subsequent renewal. Acceptable evidence (List B) is outlined in subrule 7.3(2).

7.2(3) Evidence shall not be required by foreign national applicants or licensees who are not physically present in the United States.

282—7.3(272) Acceptable evidence. The board shall accept as proof of lawful presence in the United States documents outlined in Lists A and B below. The board will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained by the board in computer “imaged” format. Legible copies of documents will not be accepted. Original documents will not be required unless a question arises concerning the documentation submitted.

7.3(1) List A—acceptable documents to establish U.S. citizenship.

a. A copy of a birth certificate issued in or by a city, county, state, or other governmental entity within the United States or its outlying possessions.

b. U.S. Certificate of Birth Abroad (FS-545, DS-135) or a Report of Birth Abroad of U.S. Citizen (FS-240).

c. A birth certificate or passport issued from:

(1) Puerto Rico, on or after January 13, 1941.

(2) Guam, on or after April 10, 1989.

(3) U.S. Virgin Islands, on or after February 12, 1927.

(4) Northern Mariana Islands after November 4, 1986.

(5) American Samoa.

(6) Swain’s Island.

(7) District of Columbia.

d. A U.S. passport (expired or unexpired).

e. Certificate of Naturalization (N-550, N-57, N-578).

f. Certificate of Citizenship (N-560, N-561, N-645).

g. U.S. Citizen Identification Card (I-79, I-197).

h. An individual Fee Register Receipt (Form G-711) that shows that the person has filed an application for a New Naturalization or Citizenship Paper (Form N-565).

i. Any other acceptable document which establishes a U.S. place of birth or indicates U.S. citizenship.

7.3(2) List B—acceptable documents to establish alien status.

a. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). Evidence includes:

(1) INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”); or

(2) Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

b. An alien who is granted asylum under Section 208 of the INA. Evidence includes:

(1) INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA.

(2) INS Form I-668B (Employment Authorization Card) annotated “274a.12(a)(5).”

(3) INS Form I-776 (Employment Authorization Document) annotated “A5.”

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- (4) Grant Letter from the Asylum Office of INS.
- (5) Order of an immigration judge granting asylum.
- c. A refugee admitted to the United States under Section 207 of the INA. Evidence includes:
 - (1) INS Form I-94 annotated with stamp showing admission under Section 207 of the INA.
 - (2) INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(3)."
 - (3) INS Form I-766 (Employment Authorization Document) annotated "A3."
 - (4) INS Form I-571 (Refugee Travel Document).
- d. An alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA.
- e. An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-2-8). Evidence includes:
 - (1) INS Form I-668 (Employment Authorization Card) annotated "271a.12(a)(10)."
 - (2) INS Form I-766 (Employment Authorization Document) annotated "A10."
 - (3) Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.
- f. An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. Evidence includes:
 - (1) INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA.
 - (2) INS Form I-668 (Employment Authorization Card) annotated "274a.12(a)(3)."
 - (3) INS Form I-776 (Employment Authorization Document) annotated "A3."
- g. An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). Evidence includes:
 - (1) INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6.
 - (2) Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7.
 - (3) INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.
- h. An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 showing this status.
- i. An alien who has been declared a battered alien. Evidence includes INS petition and supporting documentation.
- j. Any other documentation acceptable under the INA to establish alien status.

These rules are intended to implement the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621).

ARC 5097B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Termination**

Pursuant to the authority of Iowa Code section 272.2(12), the Board of Educational Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on January 18, 2006, as **ARC 4812B**, proposing to amend Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

The Notice proposed to amend Chapter 11 by adding new rules specifying the requirements for the removal of reference to a public letter of reprimand from the public information access system maintained by the Board.

The Board is terminating the rule making commenced in **ARC 4812B** and will not renote the proposed rules.

ARC 5100B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

The proposed amendment will change the procedural requirements for practitioners renewing their licenses. The amendment will accommodate the on-line renewal process and will subject only a small number of applicants to an audit of the credits they are submitting for the renewal of their licenses.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at a public hearing that will be held Tuesday, May 30, 2006, at 2 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147; or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Friday, June 2, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** rule:

282—17.13(272) Audit of renewal. The board will randomly audit a minimum of 10 percent of the applications for renewal of the standard, master educator, and administrator licenses.

17.13(1) Verification required. If audited, the licensee must submit verification of compliance with renewal credit requirements. Licensees are required to keep transcripts of courses taken during the term of the license. Original transcripts and all other documents as required by 282—Chapter 17 must be submitted within 30 calendar days after the date of the audit. An extension of time may be granted on an individual basis.

17.13(2) Results of audit.

a. The board shall notify the licensee of satisfactory completion of the audit by issuing the license.

b. A licensee's failure to complete the audit satisfactorily or falsification of information shall be considered a violation of 282—Chapter 25, Code of Professional Conduct and Ethics, and the executive director may initiate a complaint against the licensee.

c. A licensee's failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement; completion of an audit will be required prior to further license renewal.

ARC 5076B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

Section 6036 of the Deficit Reduction Act of 2005, which was signed in February 2006, requires Medicaid applicants and recipients to furnish documentation proving that they are citizens or nationals of the United States. This amendment incorporates that requirement into Iowa Medicaid rules and lists acceptable documentation.

Acceptable documentation for people with "national" status consists of documents issued by the U.S. Citizenship and Immigration Services. Acceptable documentation for people

who are U.S. citizens is a U.S. passport or, most commonly, a birth certificate in combination with some other identification, such as a driver's license. Under the legislation, a driver's license alone is not sufficient identification unless the state that issued the license has verified the person's citizenship before issuing the license. An Iowa driver's license does not meet this standard.

The federal legislation imposes this verification requirement effective July 1, 2006. Under the proposed rules, a Medicaid application will not be approved after that date unless each applicant has furnished the required verification. The requirement will be imposed on people receiving Medicaid benefits at the time of their next eligibility review. If acceptable verification is not furnished at that time, the person's Medicaid eligibility will end.

This amendment does not provide for waivers in specified situations because the Deficit Reduction Act of 2005 does not allow any exceptions.

Any interested person may make written comments on the proposed amendment on or before May 31, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment was also Adopted and Filed Without Notice and is published herein as **ARC 5077B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 249A.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5084B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 88.5 and 91.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization and Procedures Before the Division," Chapter 10, "General Industry Safety and Health Rules," Chapter 26, "Construction Safety and Health Rules," and Chapter 28, "Occupational Safety and Health Standards for Agriculture," Iowa Administrative Code.

The proposed amendments update the agency's procedural rules and adopt by reference changes to federal occupational safety and health regulations.

The changes substantially reduce the significant health risks for employees exposed to hexavalent chromium in general industry and construction. The permissible exposure limit for hexavalent chromium and all hexavalent compounds is reduced from 52 to 5 micrograms per cubic meter

LABOR SERVICES DIVISION[875](cont'd)

of air as an 8-hour weighted average. New hexavalent chromium provisions relating to controlling exposure, respiratory protection, personal protective equipment and clothing, hygiene areas and practices, medical surveillance, hazard communication and record keeping are included. The implementation date varies depending on the employer and the provision.

The changes also reinstate standards from 1996 relating to roll-over protective structures for construction and agriculture, but with minor editing. Reinstating the older roll-over protective structure standards will primarily impact testing options available to equipment manufacturers and businesses that retrofit equipment with roll-over protective structures.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and to make Iowa's rules more current and consistent with federal regulations. Limiting exposure to hexavalent chromium will reduce the risk of lung cancer, asthma, and damage to the skin and nasal lining that can result from hexavalent chromium exposure.

Pursuant to Iowa Code subsection 88.5(1)(a) and 29 CFR 1953.5, Iowa must adopt the federal standards. The U.S. Department of Labor adopted the hexavalent chromium standard as required by the Third Circuit Court of Appeals in *Public Citizen Health Research Group v. Chao*, 314 F.3d 143 (3rd Cir. 2002).

Written data, views, or arguments to be considered in adoption must be submitted no later than May 31, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iowa.gov.

A public hearing will be held on May 31, 2006, at 2:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

These amendments are intended to implement Iowa Code section 88.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 875—1.102(17A,91), introductory paragraph, as follows:

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be submitted in writing to ~~Byron K. Orton~~, Labor Commissioner, 1000 E. Grand Avenue, Des Moines, Iowa 50319. In either case, the petition shall include the following information where applicable:

ITEM 2. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

71 Fed. Reg. 10373 (February 28, 2006)

ITEM 3. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

70 Fed. Reg. 76985 (December 29, 2005)

71 Fed. Reg. 10381 (February 28, 2006)

ITEM 4. Amend rule **875—28.1(88)** by inserting the following at the end thereof:

70 Fed. Reg. 77003 (December 29, 2005)

ARC 5092B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 91A.9(4), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 35, "Wage Collection Payment," Iowa Administrative Code.

This amendment implements Iowa Code chapter 91A; makes technical and editorial corrections; reorganizes and rennumbers certain rules; and gives further details on wage claim procedures.

This amendment will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This amendment does not contain a waiver provision because there is a waiver provision in Iowa Administrative Code 875—1.101(17A,91).

If requested no later than May 30, 2006, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held at 11 a.m. on June 2, 2006, at Iowa Workforce Development, 1000 East Grand, Des Moines, Iowa, in the Stanley Room. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515) 242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than May 30, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to mitchell.mahan@iwd.state.ia.us.

The Division of Labor Services will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than June 12, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses.

This amendment is intended to implement Iowa Code chapter 91A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

LABOR SERVICES DIVISION[875](cont'd)

The following amendment is proposed.

Amend **875—Chapter 35** as follows:

CHAPTER 35
WAGE COLLECTION PAYMENT

875—35.1(91A) Definitions.

“Claim for wages” means the printed form available upon request from the division.

“Claimant” means an employee who has submitted a wage claim form to the labor commissioner.

“Commissioner” as used herein shall mean means the labor commissioner of the division of labor services or a designee.

“Division” means the division of labor services of the department of workforce development.

“Employee” is defined in Iowa Code chapter 91A, and does not include an independent contractor.

“Enforceable claim” as used herein shall mean a claim for wages which merits judicial proceedings and one which is collectible means eligible for the enforcement actions of the labor commissioner.

“Legal action” means filing in a court of competent jurisdiction and subsequent activity pursuant to that filing.

“Wage claim form” means a document of the division that requests information pertinent to a wage claim that an employee submits to the division to commence investigation of the wage claim.

875—35.2(91A) Filing a claim. A claim for wages shall be made by filing a complete claim for wages form with the division located at 1000 East Grand Avenue, Des Moines, Iowa 50319. The claim for wages form is available upon request. The requests may be made by telephoning, writing, or personally visiting the division.

875—35.2(91A) Right of private action. Nothing in this chapter, including a determination that a claim is unenforceable, prejudices the right of an employee to pursue a wage claim by private action with or without the services of an attorney. If a claimant wishes to pursue a private action after assigning a wage claim to the commissioner, the claimant shall so notify the division in writing prior to commencing that private action.

875—35.3(91A) Filing a claim.

35.3(1) Wage claim form. A wage claim form shall be available upon request. An aggrieved employee shall supply such information as required by the commissioner to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant’s knowledge and belief. A claim for wages shall be made by submitting a complete wage claim form to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

35.3(2) Assignment of claim. By submitting a wage claim form to the division, a claimant assigns the claim to the commissioner contingent on the commissioner’s determination that the claim is enforceable. A claimant may terminate the assignment by so notifying the division in writing. The commissioner may terminate the assignment upon a determination that the claim is not enforceable.

35.3(3) Denial of claim. The commissioner may deny claims within 14 days of receipt. Reasons for denying a claim without further investigation include, but are not limited to, the following:

- a. The claim is received by the division more than one year after the date the wages became due and payable.
- b. The claim must be heard in another forum or jurisdiction.
- c. The claimant has begun a legal proceeding on the claim or has legal representation to pursue the claim.
- d. The claim has been discharged in bankruptcy.
- e. The claimant is not a resident of Iowa when submitting the claim to the division.

875—35.3 35.4(91A) Investigation.

35.3(1) 35.4(1) Receipt of wage claim form. Upon receipt by the division of a completed and signed claim for wages wage claim form from an aggrieved employee, the commissioner shall commence investigation of review the claim for wages and the allegations therein. The commissioner’s investigation review is not to be construed as a contested case as defined in Iowa Code chapter 17A.

35.3(2) 35.4(2) Employer notification of wage claim. The commissioner shall advise notify the employer in writing of the allegations contained in the claim for wages of the claimant and shall request a response from the employer within 14 days’ time days from the date of the letter. This period may be extended by the commissioner for good cause.

35.3(3) 35.4(3) Failure of employer to respond. If the employer fails to answer the commissioner’s request for response within the 14-day period, or as extended by the commissioner, the commissioner may determine the employee’s claim to be enforceable.

35.3(4) 35.4(4) Additional information from claimant. If the employer answers the commissioner’s request for response within the established time, the commissioner shall notify the aggrieved employee claimant of the employer’s response and afford that employee the claimant an opportunity to present additional information in support of the employee’s claim for wages. The employee claimant shall submit the requested additional information within 14 days from the date of the letter. This period may be altered extended by the commissioner for good cause.

35.3(5) 35.4(5) Additional information from employer. Upon receipt of the requested additional information from the employee, the commissioner may determine additional information is required from the employer.

35.3(6) 35.4(6) Determination of enforceability. Upon receipt of all requested sufficient information, the commissioner may determine the employee’s claim for wages to be enforceable and the commissioner shall notify the employee claimant and the employer of that determination. Due to the budgetary constraints placed upon the division and its desire to provide the largest number of employees with assistance in the pursuit of claimed wages, the commissioner may determine that a claim is unenforceable by the division if the claim is of a complex nature requiring extensive legal discovery, proceedings, and the claim is for a substantial amount of wages. The fact that a claim for wages is unenforceable for such a reason in no way precludes the employee from seeking the services of a private attorney. The employee may have the attorney’s fees reimbursed should that employee prevail in court as provided by Iowa Code section 91A.8. Should the commissioner determine the claim is unenforceable by the division, the commissioner shall so notify the employee. The fact that the commissioner has determined a claim for wages is unenforceable in no way precludes the employee from pursuing the matter, or from seeking the services of a private attorney. The employee may have the attorney’s fees reimbursed should the employee prevail in court as provided by Iowa Code section 91A.8.

LABOR SERVICES DIVISION[875](cont'd)

35.3(7) Upon a determination that a claim for wages is enforceable, the commissioner shall notify the employer of that determination in writing, and afford the employer an opportunity to tender settlement within 14 days of the writing prior to initiating judicial proceedings.

35.4(7) *Determination of unenforceability.* The commissioner may, at any time, determine a claim to be unenforceable. Should the commissioner determine the claim is unenforceable, the commissioner shall so notify the claimant. Reasons for the commissioner to determine that a claim is unenforceable include, but are not limited to, the following:

- a. *Doubtful legal validity or complexity of the claim.*
- b. *Doubtful ability to collect money from the employer.*
- c. *The claim may require extensive discovery or involve protracted proceedings.*
- d. *The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.*
- e. *The claimant is not responsive to the reasonable requests of the division, including, but not limited to, requests to provide information and to participate in a legal action.*
- f. *The claimant fails to notify the division of an address change.*
- g. *The inequity of the claim in the particular situation.*
- h. *Another jurisdiction or forum is preferable for the claim.*
- i. *A substantial probability that the claimant was not an employee.*
- j. *The claim has been included in a bankruptcy estate.*

35.4(8) *Settlement of claim.* The commissioner may settle a claim at any time with the consent of the claimant. Such consent may be included on the wage claim form.

875—35.4(91A) Judicial proceedings. Upon filing a legal action, the commissioner shall be bound by the standard of conduct required by the code of professional responsibility for lawyers.

875—35.5(91A) Legal action on wage claims.

35.5(1) *Settlement opportunity.* The commissioner shall, in writing, afford the employer an opportunity to tender settlement 14 days prior to commencing a legal action.

35.5(2) *Standard of conduct.* Upon commencing a legal action, the commissioner shall be bound by the standard of conduct required by the code of professional responsibility for lawyers.

35.5(3) *Counterclaims.* The commissioner shall not represent claimants on counterclaims or other legal actions brought by employers against claimants.

35.5(4) *Relief requested.* The commissioner may request liquidated damages, interest, attorneys' fees, and court costs in addition to wages due.

35.5(5) *Claimant participation.* The commissioner may require the claimant to attend hearings and otherwise assist in the legal action as a condition of the commissioner's enforcing the claim.

These rules are intended to implement Iowa Code chapter 91A and section 84A.2.

ARC 5102B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to adopt new Chapter 65, "Elevator Safety Board Administrative and Regulatory Authority," Chapter 66, "Waivers or Variances from Administrative Rules by the Elevator Safety Board," Chapter 67, "Elevator Safety Board Petitions for Rule Making," Chapter 68, "Declaratory Orders by the Elevator Safety Board," Chapter 69, "Contested Cases Before the Elevator Safety Board," Chapter 70, "Public Records and Fair Information Practices of the Elevator Safety Board," and to amend Chapter 72, "New Installations," and Chapter 73, "Existing Facilities," Iowa Administrative Code.

The proposed amendments create procedures for Board actions, rescind an outdated requirement for scavenger pumps, adopt a new rule concerning shunt trip breakers in retrofitted elevators, and amend an existing safety bulkhead requirement.

The purposes of these amendments are to establish Board procedures, clarify methods and time frames for compliance with existing rules, protect the safety of the public, and implement legislative intent.

A public hearing will be held on June 1, 2006, at 8 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than June 1, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments are intended to implement Iowa Code chapters 17A and 89A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Insert the following **new** division title preceding **875—Chapter 65**:

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

LABOR SERVICES DIVISION[875](cont'd)

ITEM 2. Adopt the following **new** chapters:

CHAPTER 65

ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

875—65.1(89A) Definitions.

“Board” means the elevator safety board.

“Board office” means the offices of the division of labor services of the department of workforce development.

“Commissioner” means the labor commissioner of the state of Iowa.

875—65.2(89A) Purpose of board. The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89A. The mission of the board is to protect the public health, safety and welfare by formulating definitions and rules relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of elevators, escalators, and related equipment in the state. The responsibilities of the board include, but are not limited to:

65.2(1) Adopting rules necessary to administer the duties of the board.

65.2(2) Hearing and deciding appeals concerning notices of defect and inspection reports that relate to the installation, operation, and maintenance of elevators, escalators, and related equipment in the state.

875—65.3(21,89A) Organization of board.

65.3(1) The board shall be composed of the commissioner or the commissioner’s designee and eight additional members appointed by the governor and confirmed by the senate.

65.3(2) The eight appointed members of the board shall include:

- a. Two representatives from an elevator manufacturing company or its authorized representative.
- b. Two representatives from elevator servicing companies.
- c. One building owner or manager.
- d. One representative employed by a local government in this state who is knowledgeable about building codes in this state.
- e. One representative of workers actively involved in the installation, maintenance, and repair of elevators.
- f. One licensed mechanical engineer.

65.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner’s designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

65.3(4) The board has the authority to:

- a. Decide appeals concerning notices of defect or inspection reports issued by the commissioner pursuant to Iowa Code chapter 89A.
- b. Establish fees.
- c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.
- d. Hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. The board shall cite the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all

discussions, persons present, and action occurring at a closed session and shall record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Perform any other function authorized by a provision of law.

875—65.4(21,89A) Public meetings.

65.4(1) The board shall hold at least one meeting each calendar quarter.

65.4(2) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings shall be conducted in accordance with Robert’s Rules of Order.

65.4(3) The chairperson or the chairperson’s designee shall prepare an agenda listing all matters to be discussed at the meeting.

65.4(4) A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

65.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session. The dates and locations of board meetings may be obtained from the division of labor’s Web site or directly from the board office.

65.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise. Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

65.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

65.4(8) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

875—65.5(89A) Official communications. All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21 and 89A.

CHAPTER 66

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES BY THE ELEVATOR SAFETY BOARD

875—66.1(17A,89A) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

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875—66.2(17A,89A) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—66.3(17A,89A) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

66.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

66.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

66.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

66.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

66.3(5) There is a reasonable relationship between the age of the facility and the variance requested.

875—66.4(17A,89A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

66.4(1) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

66.4(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

66.4(3) Filing petition. A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—66.5(17A,89A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

66.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

66.5(2) A description of and citation to the specific rule from which a waiver is requested.

66.5(3) The specific waiver requested, including the precise scope and duration.

66.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 875—66.3(17A,89A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

66.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the elevator, escalator, or other equipment affected by the proposed waiver.

66.5(6) Any information known to the requester regarding the board's action in similar cases.

66.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

66.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

66.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

66.5(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

66.5(11) The state identification number of the elevator, escalator, or related equipment.

66.5(12) The age of the facility.

875—66.6(17A,89A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request. The petitioner must submit all materials for consideration at least three weeks prior to board review.

875—66.7(17A,89A) Notice. The board shall acknowledge a petition within ten days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—66.8(17A,89A) Board review procedures.

66.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

66.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—66.9(17A,89A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—66.10(17A,89A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

66.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

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66.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

66.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

66.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

66.10(5) Conditions. The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

66.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impractical. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

66.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

66.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

66.10(9) Service of order. Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

875—66.11(17A,89A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—66.12(17A,89A) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

875—66.13(17A,89A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

66.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

66.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

66.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—66.14(17A,89A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—66.15(17A,89A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—66.16(17A,89A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89A.

CHAPTER 67

ELEVATOR SAFETY BOARD
PETITIONS FOR RULE MAKING

875—67.1(17A,89A) Petitions for rule making. Any person or agency may file a petition for rule making with the board at the location specified in rule 875—65.5(89A). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the requester:

67.1(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

67.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

67.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

67.1(4) A brief summary of any data supporting the action urged in the petition.

67.1(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

67.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

67.1(7) The board may deny a petition because it does not provide the required information.

875—67.2(17A,89A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or

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from any other person concerning the substance of the petition.

875—67.3(17A,89A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—67.4(17A,89A) Board review procedures.

67.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

67.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

67.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

67.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

CHAPTER 68
DECLARATORY ORDERS BY
THE ELEVATOR SAFETY BOARD

875—68.1(17A,89A) Petition for declaratory order. Any person may file at the board's offices a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

68.1(1) The petition must be in writing and provide the following information where applicable and known to the requester:

- a. A clear and concise statement of all relevant facts on which the order is requested.
- b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
- c. The questions the petitioner wants answered, stated clearly and concisely.
- d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

68.1(2) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

875—68.2(17A,89A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—68.6(17A,89A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—68.3(17A,89A) Intervention.

68.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

68.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

68.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

b. The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement in-

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dicating the person to whom communications should be directed.

875—68.4(17A,89A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—68.5(17A,89A) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—68.6(17A,89A) Service and filing of petitions and other papers.

68.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

68.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

68.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rules 875—69.10(17A,89A) and 875—69.11(17A,89A).

875—68.7(17A,89A) Board review procedures.

68.7(1) Unless the board makes other arrangements, petitions for declaratory order will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

68.7(2) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—68.8(17A,89A) Action on petition.

68.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9.

68.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing or date of delivery if service is by other means, unless another date is specified in the order.

875—68.9(17A,89A) Refusal to issue order.

68.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not provide the required information.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

68.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

68.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

875—68.10(17A,89A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

875—68.11(17A,89A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—68.12(17A,89A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

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CHAPTER 69
CONTESTED CASES BEFORE
THE ELEVATOR SAFETY BOARD

875—69.1(17A,89A) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may, within 30 days of the issuance of the report, petition the commissioner for reconsideration of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89A.13(5). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

69.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. A petition for reconsideration shall specify:

- a. The party seeking reconsideration, including mailing address and telephone number;
- b. The location of the equipment subject to the challenged inspection report;
- c. The inspection date;
- d. The inspector who issued the challenged inspection report;
- e. The specific findings or conclusions to which exception is taken;
- f. The relief sought.

69.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all documents relevant to the petition for reconsideration that the petitioning party desires the commissioner to consider when evaluating the petition.

69.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

69.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

69.1(5) The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

69.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

- a. Affirm the inspection report as issued;
- b. Issue an amended inspection report;
- c. Rescind the inspection report;
- d. Deny the petition as untimely.

69.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

875—69.2(17A,89A) Appeal to the board. The commissioner's ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration

may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. Consideration of an appeal of a ruling on a petition for reconsideration shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal of the ruling on petition for reconsideration and shall defend the ruling in a contested case proceeding.

875—69.3(17A,89A) Informal review. If the board considers it appropriate, and if requested and consented to by all parties, the board may grant a voluntary informal review of the facts and circumstances regarding the inspection report at issue, subject to the provisions of this rule.

69.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

69.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

875—69.4(17A,89A) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—69.5(17A,89A) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—69.6(17A,89A) Scope of issues. Only those issues raised before the commissioner in the petition for reconsideration will be considered preserved for appeal to the board.

875—69.7(17A,89A) File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the commissioner shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the commissioner in ruling on the petition for reconsideration, and the commissioner's ruling on the petition for reconsideration.

875—69.8(17A,89A) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

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875—69.9(17A,89A) Presiding officer.

69.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 69.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

69.9(2) Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

69.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

69.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

69.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—69.26(17A,89A) and 875—69.27(17A,89A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

69.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

875—69.10(17A,89A) Service and filing.

69.10(1) Service—when required. Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

69.10(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

69.10(3) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the board office. All documents that are required to be served upon a party shall be filed simultaneously with the board.

69.10(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—65.5(89A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

69.10(5) Proof of mailing. Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date) (Signature)

875—69.11(17A,89A) Time requirements.

69.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

69.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—69.12(17A,89A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—69.13(17A,89A) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature

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of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—69.14(17A,89A) Disqualification.

69.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

69.14(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 69.25(7).

69.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

69.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 69.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

69.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for dis-

qualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

69.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—69.26(17A,89A) and seek a stay under rule 875—69.30(17A,89A).

875—69.15(17A,89A) Consolidation and severance.

69.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

69.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—69.16(17A,89A) Discovery.

69.16(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

69.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—69.17(17A,89A) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board’s authority may seek evidence whether or not privileged or confidential under law.

69.17(1) The presiding officer shall, upon the written request of the appellant or the state, issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

69.17(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;

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c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

69.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

69.17(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

69.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

69.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

69.17(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

69.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

875—69.18(17A,89A) Motions.

69.18(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

69.18(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

69.18(3) The presiding officer may schedule oral argument on any motion.

69.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

69.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—69.29(89A) and appeal pursuant to subrule 69.27(3).

875—69.19(17A,89A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

875—69.20(17A,89A) Prehearing conference.

69.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

69.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established

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by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

69.20(3) In addition to the requirements of subrule 69.20(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

69.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—69.21(17A,89A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

69.21(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

69.21(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—69.22(17A,89A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—69.23(17A,89A) Hearing procedures.

69.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

69.23(2) All objections shall be timely made and stated on the record.

69.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

69.23(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

69.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

69.23(6) Witnesses may be sequestered during the hearing.

69.23(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.
- b. The parties shall be given an opportunity to present opening statements.
- c. The parties shall present their cases in the sequence determined by the presiding officer.
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.
- e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.
- f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

69.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

69.23(9) The hearing shall be open to the public, except as otherwise provided by law.

69.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the secretary for five years after the resolution of the case.

69.23(11) Default.

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a per-

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son with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

875—69.24(17A,89A) Evidence.

69.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

69.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

69.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

69.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

69.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

69.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—69.25(17A,89A) Ex parte communication.

69.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any

party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

69.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

69.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

69.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

69.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

69.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order; or

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

69.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

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69.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

875—69.26(17A,89A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other pre-hearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

875—69.27(17A,89A) Decisions.

69.27(1) Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

69.27(2) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by inter-office mail or first-class mail to the counsel of record.

69.27(3) Appeals and review.

a. Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order appealed from;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. Scheduling. The board shall issue a schedule for consideration of the appeal.

f. Briefs and arguments. Unless otherwise ordered, any briefs must be filed within five days of the meeting.

g. Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—69.28(17A,89A) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—69.29(17A,89A) Applications for rehearing.

69.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

69.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

69.29(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

69.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

69.29(5) Disposition. The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—69.30(17A,89A) Stays of board actions.

69.30(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

69.30(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

69.30(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

875—69.31(17A,89A) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

69.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

69.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the dis-

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strict court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 69.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89A.

CHAPTER 70

PUBLIC RECORDS AND FAIR INFORMATION
PRACTICES OF THE ELEVATOR SAFETY BOARD**875—70.1(22,89A) Definitions.** As used in this chapter:

“Agency” in these rules means the elevator safety board.

“Confidential record” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” in these rules means the elevator safety board.

“Personally identifiable information” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“Record system” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

875—70.2(22,89A) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; the agency shall cooperate with members of the public in implementing the provisions of that chapter.

875—70.3(22,89A) Requests for access to records.

70.3(1) Location of record. A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. If a request for access to a record is misdirected, the request will be promptly forwarded to the appropriate person within the agency.

70.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

70.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person request-

ing the information to facilitate the board’s response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

70.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—70.4(22,89A) and other applicable provisions of law.

70.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

70.3(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

70.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

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(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

875—70.4(22,89A) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—70.3(22,89A).

70.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

70.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

70.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

70.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

70.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

70.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a

record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

70.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

70.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

70.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

70.5(5) Request granted or deferred. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

70.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines

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that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

875—70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

875—70.7(22,89A) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

875—70.8(22,89A) Disclosures without the consent of the subject.

70.8(1) Open records are routinely disclosed without the consent of the subject.

70.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 875—70.9(17A, 89A) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the con-

trol of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

875—70.9(17A,89A) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

70.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

70.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

70.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

70.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

70.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

70.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

70.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

70.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

875—70.10(22,89A) Consensual disclosure of confidential records.

70.10(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—70.7(22,89A).

70.10(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

875—70.11(22,89A) Release to subject.

70.11(1) The subject of a confidential record may file a written request to review confidential records about that per-

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son. However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. Other records may be withheld from the subject as authorized by law.

70.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

875—70.12(21,22,89A) Availability of records.

70.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

70.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code sections 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"e."

70.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—70.4(22,89). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 70.4(3).

875—70.13(22,89A) Applicability. This chapter does not:

70.13(1) Require the agency to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

70.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

70.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency that are governed by the regulations of another agency.

70.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

70.13(5) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

875—70.14(17A,22,89A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the agency are:

70.14(1) Personnel records. These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

70.14(2) Contested case records. Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89A.11.

875—70.15(17A,21,22,89A) Other groups of records. This rule describes groups of records maintained by the agency other than record systems. These records are routinely available to the public. However, the agency's files of these records may contain confidential information. These records may contain information about individuals. These records include:

70.15(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

70.15(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

70.15(3) Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions. These records are open to the public except for information that is confidential according to rule 875—70.12(21,22,89A). This information is stored on paper and electronically.

70.15(4) Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

70.15(5) Publications. News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and elec-

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tronically, and some publications may be found on the board's Web site.

70.15(6) Other records. Other records that are not exempted from disclosure by law may be stored on paper or electronically.

875—70.16(22,89A) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—70.17(22,89A) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

70.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary, and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 70.17(2).

70.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records, and information supplied will be subject to open records requests pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89A.

ITEM 3. Rescind the division title "Elevator Division" that precedes **875—Chapter 71**.

ITEM 4. Amend rule 875—72.5(89A) as follows:

875—72.5(89A) Hydraulic elevators. The provisions contained in ASME A17.1, part 3, are adopted by reference. ~~On hydraulic elevator installations, a scavenger pump or other acceptable means to carry excess oil from the cylinder packing gland back to the oil storage tank of the elevator shall be provided.~~

ITEM 5. Adopt the following new rule 875—73.25(89A).

875—73.25(89A) Sprinkler retrofits and shunt trip breakers. When a sprinkler is added to a hoistway or machine room, the facility shall comply with the following:

73.25(1) The installation shall comply with the applicable version of ASME A17.1 Rule 2.8.3.3.

73.25(2) The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1 Rule 2.27.3.

73.25(3) The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of this rule, the relevant subrule of 875—72.1(89A) shall be based on the date the sprinkler is installed instead of the date the facility was installed.

ITEM 6. Adopt the following new rule **875—73.26(89A)**:

875—73.26(89A) Single bottom jacks. ASME A17.1-2000 Rule 8.6.5.8 requires that safety bulkheads or safeties, conforming guide rails, and fastenings be installed on all hydraulic cylinders located below ground. The deadline for compliance with ASME A17.1-2000 Rule 8.6.5.8 is July 1, 2011. Documentation from the manufacturer establishing that a safety bulkhead was installed in an elevator prior to the adoption of ASME A17.1-2000 Rule 8.6.5.8 shall establish compliance with this rule.

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LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to adopt new Chapter 80, "Boiler and Pressure Vessel Board Administrative and Regulatory Authority," Chapter 81, "Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board," Chapter 82, "Boiler and Pressure Vessel Board Petitions for Rule Making," Chapter 83, "Declaratory Orders by the Boiler and Pressure Vessel Board," Chapter 84, "Contested Cases Before the Boiler and Pressure Vessel Board," Chapter 85, "Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board," and to amend Chapter 200, "General," Chapter 201, "Inspections and Certificates," Chapter 203, "General Requirements for all Objects," Chapter 204, "New Installations of Power Boilers," Chapter 205, "Existing Installations of Power Boilers," Chapter 206, "Miniature Boilers," Chapter 207, "Installation of Steam Heating Boilers, Hot Water Heating Boilers and Hot Water Supply Boilers," Chapter 208, "Water Heater Supply Boilers," and Chapter 209, "Pressure Vessels," Iowa Administrative Code.

The proposed amendments create board procedures; update rules by adopting the most recent codes by reference; reorganize and edit the rules to improve readability; renumber chapters; adopt, amend and rescind definitions; adopt by reference the National Fire Protection Association's Fuel Gas Code, Liquefied Petroleum Code, and Boiler and Combustion System Hazards Code; allow special inspectors to provide their clients with copies of the inspection report up to 30 days after the inspection; amend hydrostatic pressure test requirement; adopt a new requirement for clearances around objects; rescind unnecessary rules; allow the removal of a safety appliance for the purpose of altering the object; change requirements for pipes, valves, and fittings; and require the use of customary U.S. units of measure.

Although the only change to Chapter 208, "Water Heater Supply Boilers," in this Notice of Intended Action is renumbering Chapter 208 as Chapter 95, the Boiler and Pressure Vessel Board intends to amend renumbered Chapter 208 in the near future.

The purposes of these amendments are to make changes identified during the rules review required by Iowa Code subsection 89.14(7); update technical requirements; protect the safety of the public; and implement legislative intent.

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If a request is made by 4:30 p.m. on May 30, 2006, a public hearing will be held on May 31, 2006, at 9 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515) 242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than May 31, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@jwd.state.ia.us.

These amendments are intended to implement Iowa Code chapters 89, 252J and 261.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Insert the following **new** Title preceding **875—Chapter 80**:

BOILERS AND PRESSURE VESSELS

ITEM 2. Adopt the following **new** 875—Chapters 80 through 85:

CHAPTER 80

BOILER AND PRESSURE VESSEL BOARD
ADMINISTRATIVE AND REGULATORY AUTHORITY

875—80.1(89) Definitions.

“Board” means the boiler and pressure vessel board.

“Board office” means the offices of the division of labor services of the department of workforce development.

“Commissioner” means the labor commissioner of the state of Iowa.

875—80.2(21,89) Purpose of board. The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89. The mission of the board is to protect the public health, safety and welfare by formulating definitions and rules requirements relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels in the state. The responsibilities of the board include, but are not limited to:

80.2(1) Adopting rules necessary to administer the duties of the board.

80.2(2) Hearing and deciding appeals concerning notices of defect and inspection reports issued by the commissioner that relate to the installation, operation, and maintenance of boilers and pressure vessels in the state.

875—80.3(89) Organization of board.

80.3(1) The board shall be composed of the commissioner or the commissioner's designee and eight additional members appointed by the governor and confirmed by the senate.

80.3(2) The eight appointed members of the board shall include:

a. One member who is a special inspector and who is employed by an insurance company and commissioned to inspect boilers and pressure vessels.

b. Two members from certified employee organizations, one of whom shall represent steamfitters.

c. Two members who are mechanical engineers who regularly practice in the area of boilers and pressure vessels.

d. One member who is a boiler and pressure vessel distributor.

e. One member who represents boiler and pressure vessel manufacturers.

f. One member who is a mechanical contractor engaged in the business of installation, renovation, and repair of boilers and pressure vessels.

80.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

80.3(4) The board has the authority to:

a. Decide appeals concerning notices of defect or inspection reports issued by the commissioner pursuant to Iowa Code chapter 89.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. The board shall cite the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Perform any other function authorized by a provision of law.

875—80.4(21,89) Public meetings.

80.4(1) The board shall hold at least one meeting each calendar quarter.

80.4(2) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order.

80.4(3) The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at the meeting.

80.4(4) A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

80.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session. The dates and locations of board meetings may be obtained from the division of labor's Web site or directly from the board office.

80.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise. Persons

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who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

80.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

80.4(8) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

875—80.5(89) Official communications. All official communications, including submissions and requests, shall be addressed to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21 and 89.

CHAPTER 81
WAIVERS OR VARIANCES FROM
ADMINISTRATIVE RULES BY THE
BOILER AND PRESSURE VESSEL BOARD

875—81.1(17A,89) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

875—81.2(17A,89) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—81.3(17A,89) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

81.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

81.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

81.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

81.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

875—81.4(17A,89) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

81.4(1) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

81.4(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted with a caption

containing the name of the person for whom the waiver is requested.

81.4(3) Filing petition. A petition is deemed filed when it is received in the board's office. A petition should be sent to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—81.5(17A,89) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

81.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

81.5(2) A description of and citation to the specific rule from which a waiver is requested.

81.5(3) The specific waiver requested, including the precise scope and duration.

81.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 875—81.3(17A,89). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

81.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the boiler or pressure vessel affected by the proposed waiver.

81.5(6) Any information known to the requester regarding the board's action in similar cases.

81.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

81.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

81.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

81.5(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

81.5(11) The state boiler identification number of the relevant object.

875—81.6(17A,89) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request. The petitioner must submit all materials for consideration at least three weeks prior to board review.

875—81.7(17A,89) Notice. The board shall acknowledge a petition within ten days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

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875—81.8(17A,89) Board review procedures.

81.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

81.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—81.9(17A,89) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—81.10(17A,89) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

81.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

81.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

81.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

81.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

81.10(5) Conditions. The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

81.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impractical. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

81.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

81.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

81.10(9) Service of order. Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order per-

tains, and to any other person entitled to such notice by any provision of law.

875—81.11(17A,89) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—81.12(17A,89) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

875—81.13(17A,89) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

81.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

81.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

81.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—81.14(17A,89) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—81.15(17A,89) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—81.16(17A,89) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89.

CHAPTER 82

BOILER AND PRESSURE VESSEL BOARD
PETITIONS FOR RULE MAKING

875—82.1(17A,89) Petitions for rule making. Any person or agency may file a petition for rule making with the board at the location specified in rule 875—80.5(89). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and

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provide the following information where applicable and known to the requester:

82.1(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

82.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

82.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

82.1(4) A brief summary of any data supporting the action urged in the petition.

82.1(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

82.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

82.1(7) The board may deny a petition because it does not provide the required information.

875—82.2(17A,89) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—82.3(17A,89) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—82.4(17A,89) Board review procedures.

82.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

82.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

82.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

82.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new

petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

CHAPTER 83 DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

875—83.1(17A,89) Petition for declaratory order. Any person may file at the board's offices a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

83.1(1) The petition must be in writing and provide the following information where applicable and known to the requester:

a. A clear and concise statement of all relevant facts on which the order is requested.

b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.

c. The questions the petitioner wants answered, stated clearly and concisely.

d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

83.1(2) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

875—83.2(17A,89) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—83.6(17A,89) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—83.3(17A,89) Intervention.

83.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

83.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

83.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner

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with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

b. The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

875—83.4(17A,89) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—83.5(17A,89) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—83.6(17A,89) Service and filing of petitions and other papers.

83.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

83.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

83.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rules 875—84.10(17A,89) and 875—84.11(17A,89).

875—83.7(17A,89) Board review procedures.

83.7(1) Unless the board makes other arrangements, petitions for declaratory order will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled meeting,

the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

83.7(2) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—83.8(17A,89) Action on petition.

83.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9.

83.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing or date of delivery if service is by other means, unless another date is specified in the order.

875—83.9(17A,89) Refusal to issue order.

83.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not provide the required information.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

83.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

83.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

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875—83.10(17A,89) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

875—83.11(17A,89) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—83.12(17A,89) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

CHAPTER 84 CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

875—84.1(17A,89) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may, within 30 days of the issuance of the report, petition the commissioner for reconsideration of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89.14(6). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and ASME code sections rests upon the petitioning owner or operator.

84.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. A petition for reconsideration shall specify:

- a. The party seeking reconsideration, including mailing address and telephone number;
- b. The location of the equipment subject to the challenged inspection report;
- c. The inspection date;
- d. The inspector who issued the challenged inspection report;
- e. The specific findings or conclusions to which exception is taken;
- f. The relief sought.

84.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all documents relevant to the petition for reconsideration that the petitioning party desires the commissioner to consider when evaluating the petition.

84.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

84.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be

deemed untimely and will not be considered by the commissioner.

84.1(5) The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 81.

84.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

- a. Affirm the inspection report as issued;
- b. Issue an amended inspection report;
- c. Rescind the inspection report;
- d. Deny the petition as untimely.

84.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

875—84.2(17A,89) Appeal to the board. The commissioner's ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. Consideration of an appeal of a ruling on a petition for reconsideration shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal of the ruling on petition for reconsideration and shall defend the ruling in a contested case proceeding.

875—84.3(17A,89) Informal review. If the board considers it appropriate, and if requested and consented to by all parties, the board may grant a voluntary informal review of the facts and circumstances regarding the inspection report at issue, subject to the provisions of this rule.

84.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

84.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

875—84.4(17A,89) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—84.5(17A,89) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial no-

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tice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—84.6(17A,89) Scope of issues. Only those issues raised before the commissioner in the petition for reconsideration will be considered preserved for appeal to the board.

875—84.7(17A,89) File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the commissioner shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the commissioner in ruling on the petition for reconsideration, and the commissioner's ruling on the petition for reconsideration.

875—84.8(17A,89) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

875—84.9(17A,89) Presiding officer.

84.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 84.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

84.9(2) Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

84.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

84.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative

law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

84.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—84.26(17A,89) and 875—84.27(17A,89). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

84.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

875—84.10(17A,89) Service and filing.

84.10(1) Service—when required. Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

84.10(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

84.10(3) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the board office. All documents that are required to be served upon a party shall be filed simultaneously with the board.

84.10(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—80.5(89), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

84.10(5) Proof of mailing. Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date)

(Signature)

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875—84.11(17A,89) Time requirements.

84.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

84.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—84.12(17A,89) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—84.13(17A,89) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Any objections shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—84.14(17A,89) Disqualification.

84.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

84.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the

course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 84.25(7).

84.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

84.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 84.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

84.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

84.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—84.26(17A,89) and seek a stay under rule 875—84.30(17A,89).

875—84.15(17A,89) Consolidation and severance.

84.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

84.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—84.16(17A,89) Discovery.

84.16(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

84.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

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875—84.17(17A,89) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

84.17(1) The presiding officer shall, upon the written request of the appellant or the state, issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

84.17(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other evidence requested;
- f. The date, time and location for production, or inspection and copying.

84.17(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the presiding officer;
- j. The date of issuance;
- k. A return of service attached to the subpoena.

84.17(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

84.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the

subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

84.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

84.17(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

84.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

875—84.18(17A,89) Motions.

84.18(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

84.18(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

84.18(3) The presiding officer may schedule oral argument on any motion.

84.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

84.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—84.29(17A,89) and appeal pursuant to subrule 84.27(3).

875—84.19(17A,89) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of

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a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

875—84.20(17A,89) Prehearing conference.

84.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

84.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

84.20(3) In addition to the requirements of subrule 84.20(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

84.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—84.21(17A,89) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

84.21(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

84.21(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;

- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—84.22(17A,89) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—84.23(17A,89) Hearing procedures.

84.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

84.23(2) All objections shall be timely made and stated on the record.

84.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

84.23(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

84.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

84.23(6) Witnesses may be sequestered during the hearing.

84.23(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.
- b. The parties shall be given an opportunity to present opening statements.
- c. The parties shall present their cases in the sequence determined by the presiding officer.
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.
- e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.
- f. The presiding officer may enter a default judgment against a party which fails to appear at the hearing.

84.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

84.23(9) The hearing shall be open to the public, except as otherwise provided by law.

84.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the

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proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the secretary for five years after the resolution of the case.

84.23(11) Default.

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by 875—84.27(3). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

875—84.24(17A,89) Evidence.

84.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

84.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

84.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

84.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All

exhibits admitted into evidence shall be appropriately marked and be made part of the record.

84.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

84.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—84.25(17A,89) Ex parte communication.

84.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

84.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

84.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

84.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

84.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

84.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a writ-

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ten summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order; or

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

84.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

84.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

875—84.26(17A,89) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

875—84.27(17A,89) Decisions.

84.27(1) Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

84.27(2) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by inter-office mail or first-class mail to the counsel of record.

84.27(3) Appeals and review.

a. Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or

a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. Scheduling. The board shall issue a schedule for consideration of the appeal.

f. Briefs and arguments. Unless otherwise ordered, any briefs must be filed within five days of the meeting.

g. Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—84.28(17A,89) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—84.29(17A,89) Applications for rehearing.

84.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

84.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

84.29(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

84.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

84.29(5) Disposition. The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—84.30(17A,89) Stays of board actions.

84.30(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

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b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

84.30(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

84.30(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

875—84.31(17A,89) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

84.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

84.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 84.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89.

CHAPTER 85

PUBLIC RECORDS AND FAIR INFORMATION
PRACTICES OF THE BOILER AND
PRESSURE VESSEL BOARD

875—85.1(22,89) Definitions. As used in this chapter:

“Agency” in these rules means the boiler and pressure vessel board.

“Confidential record” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” in these rules means the boiler and pressure vessel board.

“Personally identifiable information” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“Record system” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

875—85.2(22,89) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and

sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; the agency shall cooperate with members of the public in implementing the provisions of that chapter.

875—85.3(22,89) Requests for access to records.

85.3(1) Location of record. A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. If a request for access to a record is misdirected, the request will be promptly forwarded to the appropriate person within the agency.

85.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

85.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

85.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—85.4(22,89) in this chapter and other applicable provisions of law.

85.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

85.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

85.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination or copying of records only if

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the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

875—85.4(22,89) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—85.3(22,89).

85.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

85.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

85.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

85.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

85.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—85.5(22,89) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

85.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

85.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

85.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

85.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is

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filed, or when the custodian receives a request for access to the record by a member of the public.

85.5(5) Request granted or deferred. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

85.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

875—85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

875—85.7(22,89) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which

the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

875—85.8(22,89) Disclosures without the consent of the subject.

85.8(1) Open records are routinely disclosed without the consent of the subject.

85.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 875—85.9(17A,89) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

875—85.9(17A,89) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

85.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

85.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

85.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

85.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

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85.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

85.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

85.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

85.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

875—85.10(22,89) Consensual disclosure of confidential records.

85.10(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—85.7(22,89).

85.10(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

875—85.11(22,89) Release to subject.

85.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. Other records may be withheld from the subject as authorized by law.

85.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

875—85.12(21,22,89) Availability of records.

85.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

85.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11,

state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“e.”

85.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—85.4(22,89). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 85.4(3).

875—85.13(22,89) Applicability. This chapter does not:

85.13(1) Require the agency to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

85.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

85.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency that are governed by the regulations of another agency.

85.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

85.13(5) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

875—85.14(17A,22,89) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the agency are:

85.14(1) Personnel records. These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

85.14(2) Contested case records. Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89.14.

875—85.15(17A,22,89) Other groups of records. This rule describes groups of records maintained by the agency other than record systems. These records are routinely available to the public. However, the agency's files of these records may contain confidential information. These records may contain information about individuals. These records include:

85.15(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

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85.15(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

85.15(3) Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions. These records are open to the public except for information that is confidential according to rule 875—85.12(21,22,89). This information is stored on paper and electronically.

85.15(4) Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

85.15(5) Publications. News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's Web site.

85.15(6) Other records. Other records that are not exempted from disclosure by law may be stored on paper or electronically.

875—85.16(22,89) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—85.17(22,89) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

85.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 85.17(2).

85.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records and information supplied will be subject to open records requests pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89.

ITEM 3. Amend **875—Chapter 200** as follows:

CHAPTER 200 90

GENERAL ADMINISTRATION OF THE BOILER
AND PRESSURE VESSEL PROGRAM

875—200.1 90.1(89) Purpose. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89.

875—200.2 90.2(89,216,252J) Definitions. The definitions in this chapter, to the extent they do not conflict with the definitions contained in Iowa Code chapter 89, shall be applicable to the rules contained in 875—Chapters 200 90 to 209 96.

"Alteration" means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"ASME" means the American Society of Mechanical Engineers.

"Authorized inspector" means a special inspector or an inspector of boilers and pressure vessels employed by the division.

"Blowoff valve" means all blowoff valves, drain valves, and pipe connections.

"BSI" means British Standards Institute.

"Certificate of noncompliance" means a certificate of noncompliance with child support payment obligations issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J or a certificate of noncompliance with student loan repayment obligations issued by the college student aid commission pursuant to Iowa Code chapter 261.

"CFR" means Code of Federal Regulations.

"CNS" means Canadian National Standards.

"Construction or installation code" means the applicable recognized national or international standard for construction or installation in effect at the time of installation such as American Society of Mechanical Engineers (ASME), German Institute of Standards (DIN), British Standards Institute (BSI), Japanese Industrial Standards (JIS) or Canadian National Standards (CNS).

"DIN" means German Institute of Standards.

"Division" means the division of labor services, unless another meaning is clear from the context.

"Electric boilers" means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

"External inspection" means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

"High temperature water boiler" means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

"Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

"Internal inspection" means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, hand hole handhole plates or other inspection opening closures are removed as required by the inspector.

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"ISO" means International Standards Organization.

"JIS" means Japanese Industrial Standards.

"Labor commissioner" means the labor commissioner or the commissioner's designee.

"Lap seam crack" means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

~~"Major repair" means a repair which affects or will affect the strength of a boiler or pressure vessel.~~

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of local boiler codes.

"National Board Inspection Code" means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

~~"New boiler installations" means all boilers constructed, installed and placed in operation after July 1, 1959, and all hot water supply boilers installed and placed in operation after July 1, 1983.~~

"Nonstandard object" means an object or related equipment that has not been designed and manufactured to a recognized national or international standard such as ASME, DIN, BSI, JIS or CNS, and has not been inspected by an inspector commissioned by the National Board and registered with the National Board.

~~"Nuclear power plant components" means items constructed in accordance with the rules of Section III, ASME Boiler and Pressure Vessel Code, for use in, or containment of, portions of a nuclear power system. A nuclear power system is that system which serves the purpose of producing and controlling the output of thermal energy from nuclear fuel and those associated systems essential to the functions and overall safety of the nuclear power system.~~

"Object" means a boiler or pressure vessel.

"Pressure vessel" means a vessel in which pressure is obtained from an external source, or by the application of heat from an indirect or direct source.

"Process steam generator" means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

"Psig" means pounds per square inch gage.

"Reinstalled boiler or pressure vessel" means an object removed from its original setting and reinstalled at the same location or at a new location.

"Relief valve" means an automatic pressure-relieving device actuated by a static pressure upstream of the valve ~~which~~ *that* opens further with the increase in pressure over the opening pressure. ~~It and that~~ is used primarily for liquid service.

"Repair" means work necessary to return a boiler or pressure vessel to a safe operating condition.

"Rupture disk device" means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

"Safety appliance" shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

"Safety relief valve" means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

"Safety valve" means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. ~~It~~ *The safety valve* is used for gas or vapor service.

"Special inspection" means an inspection which is not required by Iowa Code chapter 89.

~~"Temperature/pressure~~ *Temperature and pressure* relief valve" means a valve set to relieve at a designated temperature and pressure.

"Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

"U.S. customary units" means feet, pounds, inches and degrees Fahrenheit.

"Water heater supply boiler" means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

875—90.3(89) Stamping and tagging of Iowa identification number. *All objects shall be tagged with an Iowa identification number followed by "IA," except older objects bearing stamps consistent with prior versions of this rule. A metal tag 1 inch by 2½ inches shall be affixed to the object with the Iowa identification number. This tag shall be attached as closely as possible to the manufacturer's data plate of the object. For objects covered by Iowa Code chapter 89 that are neither appropriately stamped nor tagged, state inspectors and special inspectors shall assign numbers as directed by the division.*

875—90.4(89) National Board registration. *Except for objects governed by 875—Chapter 95, all objects must be registered with the National Board.*

875—90.5(89) Preinspection owner or user preparation.

90.5(1) Preparation of objects. *Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.*

90.5(2) Confined space and lockout, tagout procedures.

a. *It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.*

b. *It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.*

c. *If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or*

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user's confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.5(3) Hydrostatic tests. The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector; which date shall be not less than seven days after the date of notification.

90.5(4) Boilers. A boiler shall be prepared for internal inspection in the following manner:

a. Water shall be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

c. All grates of internally fired boilers shall be removed.

d. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

90.5(5) Pressure vessels. The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required, other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.5(6) Removal of covering or brickwork to permit inspection. If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.5(7) Improper preparation for inspection. If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

875—90.6(89) Inspections.

90.6(1) General. All boilers and pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2004), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) Schedule. Inspections must be performed according to the schedule set forth in Iowa Code section 89.3 and within a 60-day period prior to the expiration date of the op-

erating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

90.6(3) Inspections conducted by special inspectors. Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection. If the division inspects a boiler or pressure vessel due to the failure of a special inspector to file the inspection report, the insurance company that employs the special inspector shall pay the fee specified in 875—90.7(89).

90.6(4) Type of inspection. The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

a. Visible metal or insulation discoloration due to excessive heat.

b. Visible distortion of any part of the pressure vessel.

c. Visible leakage from any pressure-containing boundary.

d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.

e. A suspected or known history of internal corrosion or erosion.

f. Evidence or knowledge of a vessel having been subjected to external heat from a resulting fire.

g. A welded repair not documented as required.

h. Personal injury, property damage accident, or malfunction affecting the pressure vessel's integrity.

90.6(5) Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch. The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 pounds psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.6(6) Inspection of inaccessible parts. When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

875—200.3(89) Publications available for review. Pursuant to Iowa Code section 89.5, subsection 4, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

875—200.4 90.7(89) Fees.

200.4(1) 90.7(1) Special inspector certification fee. A \$40 fee shall be paid annually to the commissioner to obtain a special inspector certification pursuant to Iowa Code section 89.7, subsection 1.

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200.4(2) 90.7(2) Certificate fee. A \$25 fee shall be paid for each one-year certificate and a \$50 fee shall be paid for each two-year certificate.

200.4(3) 90.7(3) Fees for inspection. An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

a. A \$40 fee for each water heater supply boiler.
b. An \$80 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.

c. A \$200 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.

d. A \$40 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.

e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, or due to a failure of any special inspector to comply with applicable laws or rules, travel expenses may be charged at the discretion of the division.

f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.

g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.

200.4(4) 90.7(4) Fees for attempted inspections. A \$20 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

875—90.8(89) Certificate. *A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid.*

875—90.9 *Reserved.*

875—200.5 90.10(89) Quality reviews, surveys and audits.

200.5(1) 90.10(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses, as specified in 200.4(3), paragraph "j."

200.5(2) 90.10(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be

performed. The labor commissioner shall have final authority to determine qualifications and designations.

a. Assessing quality programs. The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits which lead to ASME or National Board program certification.

b. ISO 9000 assessments. The division recognizes the ASME and the National Board as acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry, and to certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A, for conducting ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.11(89) Notification of explosion. *Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.*

875—90.12(89) Publications available for review. *Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.*

These rules are intended to implement Iowa Code section 84A.5 and chapter chapters 17A, 89, 252J, and 261.

ITEM 4. Rescind **875—Chapter 201** as follows:

CHAPTER 201

INSPECTIONS AND CERTIFICATES

875—201.1(89) Inspections.

201.1(1) General. All boilers and pressure vessels covered by Iowa Code chapter 89 shall be inspected by a division inspector or special inspector within a 60-day period prior to the expiration date of an operating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

201.1(2) Inspections conducted by special inspectors. Special inspectors shall leave a copy of the completed report with the insured at the time of the inspection and shall submit reports to the division within 30 days of the inspection. The reports shall list all adverse conditions and requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection. If the division inspects a boiler or pressure vessel due to the failure of a special inspector to notify the division of the inspection results, the specified fees in 875—subrule 200.4(3), paragraph "m," shall be paid by the insurance company which employs the special inspector.

201.1(3) Type of inspection. The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. An internal inspection of an unfired steam pressure vessel operating in excess of 15 pounds per square inch may be required by the commissioner when an inspector observes any deviation from these rules, Iowa Code chapter 89, or the construction or installation code, or the National Board Inspection Code.

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Conditions including, but not limited to, the following may also be the basis for an internal inspection:

- 1.—Visible metal or insulation discoloration due to excessive heat.
- 2.—Visible distortion of any part of the pressure vessel.
- 3.—Visible leakage from any pressure-containing boundary.
- 4.—Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or temperature above or below the nameplate design temperature.
- 5.—A suspected or known history of internal corrosion or erosion.
- 6.—Evidence or knowledge of a vessel having been subjected to external heat from a resulting fire.
- 7.—A welded repair not documented as required.
- 8.—Personal injury, property damage accident, or malfunction affecting the pressure vessel's integrity.

875—201.2(89) Certificate. A certificate to operate shall not be issued until the boiler or pressure vessel complies with the applicable rules and all fees have been paid.

875—201.3(89) Preinspection owner or user preparation.

201.3(1) Preparation of objects. Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

201.3(2) Permit-required confined spaces (29 CFR 1910.146 in effect on July 1, 1997) and control of hazardous energy (lock-out/tag-out) (29 CFR 1910.147 in effect on July 1, 1997) compliance.

a.—It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lock-out/tag-out standards. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all the requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b.—It is the duty of the owner or user to inform any inspector of the owner's or user's confined space policy and standards, supply to the inspector all information necessary to assess whether the confined space is safe for entry, and ensure all inspectors comply with the policy and Iowa occupational safety and health standards for confined space entry.

c.—If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space or, if there is a breach of the policy or standard, the inspection process shall cease until the space is reassessed and determined to be safe. It is the right of an inspector to verify any of the information supplied. No inspector shall violate the owner's or user's confined space or lock-out/tag-out policies in making an inspection.

d.—The owner or user shall have all objects locked-out or tagged-out prior to entry for inspection or testing.

201.3(3) Hydrostatic tests. The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the division's inspector, which date shall be not less than seven days after the date of notification.

201.3(4) Boilers. A boiler shall be prepared for internal inspection in the following manner:

- a.—Water shall be drawn off and the boiler washed thoroughly.
- b.—Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.
- c.—All grates of internally fired boilers shall be removed.

d.—Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e.—If it is found that steam or hot water is leaking into a boiler or unfired pressure vessel when opened for inspection, the source of the leakage shall be disconnected, if necessary, to eliminate the steam or hot water from the boiler or pressure vessel to be inspected.

f.—Before opening the manhole or handhole plates and entering any parts of the steam-generating unit connected to the common header with other boilers, the nonreturn and steam stop valves must be closed, tagged, and locked. Drain valves between the two valves must be opened. Blowoff lines, where practicable, shall be disconnected between pressure parts and valves. All drains and vent lines shall be opened.

g.—Low water fuel cutoff controls shall be opened or removed to allow for visual inspection.

201.3(5) Pressure vessels. The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required including isolating the vessel from its source of pressure, affording reasonable means of access and removing manhole plates and inspection opening closures. In other cases, preparation shall include draining, venting and purging the vessel to free toxic, explosive or other harmful gases or vapors, providing suitable safeguards to prevent leakage or accidental inflow of harmful substances into the vessel, removing manhole plates and inspection opening closures, cooling and cleaning the interior of the vessel and removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel.

201.3(6) Removal of covering or brickwork to permit inspection. If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

201.3(7) Improper preparation for inspection. If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

These rules are intended to implement Iowa Code chapter 89 and 1997 Iowa Acts, House File 399.

ITEM 5. Amend **875—Chapter 203** as follows:

CHAPTER 203 91

GENERAL REQUIREMENTS FOR ALL OBJECTS

875—91.1(89) Codes adopted by reference.

91.1(1) Electrical codes. Objects installed after August 9, 2006, shall comply with the National Electric Code (2005).

91.1(2) Fire protection codes. Objects installed after August 9, 2006, shall comply with National Fire Protection Association National Fuel Gas Code, NFPA 54 (2006 Edition);

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National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2004 Edition); and National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2004 Edition).

91.1(3) Piping codes.

a. *Installations from January 1, 1998, to May 9, 2001. Installations and reinstallations from January 1, 1998, to May 9, 2001, shall comply with ASME B31.1 (1995 with 1997 addenda), and with B31.9 (1995 with 1997 addenda) up to and including the first valve.*

b. *Installations from May 9, 2001, to August 9, 2006. Installations and reinstallations from May 9, 2001, to August 9, 2006, shall comply with ASME B31.1 (1998 with 1999 and 2000 addenda), and with B31.9 (1998 with 1999 and 2000 addenda) up to and including the first valve.*

c. *Installations after August 9, 2006. Installations and reinstallations after August 9, 2006, shall comply with ASME B31.1 (2004 with 2005 addenda), and with B31.9 (2004 with 2005 addenda) up to and including the first valve.*

91.1(4) National Board Inspection Code. *Installations and reinstallations after August 9, 2006, shall comply with National Board Inspection Code, ANSI/NB-23 (2004 with 2005 addenda).*

875—203.1(89) Hydrostatic pressure tests. A hydrostatic pressure test, when applied to objects, shall not exceed 1½ times the maximum allowable working pressure, less corrosion factor, as applicable. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2 percent. During a hydrostatic test involving pressures in excess of the lowest safety valve setting, the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring. Other safety devices that may be damaged shall be removed prior to applying a hydrostatic test. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. To determine tightness, the hydrostatic test pressure need be no greater than the set pressure of the safety valve having the lowest setting.

2. For safety tests, the pressure shall be equal to 2 times the maximum allowable working pressure, less corrosion factor, as applicable. All major repairs and alterations shall require a safety test.

875—203.2 91.2(89) Safety appliance. Any safety appliance required shall not be removed or tampered with except for the purpose of repair or inspection. *No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection.* An object shall not be operated unless all applicable safety appliances are properly functional and operational.

875—203.3 91.3(89) Pressure-reducing valves. Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low-pressure side of the reducing valve when the piping equipment on the low-pressure side does not meet the requirements for the full initial pressure. The relief or safety valves shall be located adjoining or as close as possible to the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valves or safety valves shall be such that the pressure rating of the lower- ~~lowest~~ pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. If a bypass around the reducing valves is used, a safety valve

is required on the low-pressure side and shall be of sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low-pressure side. A pressure gage shall be installed on the low-pressure side of a reducing valve.

875—203.4 91.4(89) Blowoff equipment. The blowdown from an object that enters a sanitary sewer system or blowdown which ~~that~~ is considered a hazard to life or property shall pass through some form of blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees F, and the pressure shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.

875—203.5 91.5(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blow-off pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or ~~temperature/pressure~~ temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size and arrangement of discharge piping shall be such that any pressure that may exist or develop will not reduce the relieving capacity of the relieving devices below that capacity required to protect the object. *The size of the discharge piping shall not be reduced from the size of the relief valve.*

875—203.6 91.6(89) Piping, valves, and fitting requirements. No galvanic pipe, valve, or fittings may be used on any object. The minimum piping, valve, and fitting supplied on any object shall be Schedule 40. The piping design must take into account the removal of material for mechanical joints such as threading or bolting, corrosion and erosion requirements, and the effects of hydrostatic head pressure. ASME B31.1 and ASME B31.9 (1998 with 1999 and 2000 addenda) provide the applicable standards and calculations for piping design.

875—203.7 91.7(89) Electric steam generator.

203.7(1) 91.7(1) A cable at least as large as one of the incoming power lines to the generator shall be permanently fastened to and provide grounding of the generator shell.

203.7(2) 91.7(2) A suitable screen or guard shall be provided around high-tension bushings and a sign posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the generator to accidentally come in contact with the high-tension circuits.

203.7(3) 91.7(3) All electrically heated boilers shall meet the applicable standards of the construction or installation code.

875—203.8 91.8(89) Alterations, retrofits and repairs to objects. Alterations, retrofits, and repairs shall be made so that the object shall be at least as safe as the original construction. Alterations, retrofits, and repairs ~~not covered by these rules~~ shall be done as though new construction and shall comply with the applicable code or codes *as adopted in 875—Chapters 90 through 96. The appropriate A National Board "R" form shall be filed with the division for each repair.*

203.8(1) ~~Welding. Repairs or alterations by welding shall be approved beforehand by an authorized inspector, and~~

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all welding repairs or alterations must be in accordance with the "Repairs and Alterations to Boilers and Pressure Vessels by Welding," part RC and part RD, National Board Inspection Code (1998 with 1999 and 2000 addenda). All welding shall be done by an organization holding a National Board "R" stamp. The organization performing the repair or alteration is responsible for filing the appropriate National Board "R" form with the division and the National Board of Boiler and Pressure Vessel Inspectors.

The material used for patches shall be of the same general quality and have at least the minimum physical properties of the plate to be patched. The thickness of any patch shall be at least equal to the plate being patched. Flush-welded patches in unstayed shells, drums, or headers shall be radiographed and stress-relieved in accordance with the requirements of the construction or installation code.

203.8(2) Stress-relieving of alterations and repairs. Subject to the approval of the labor commissioner, peening or other methods of stress-relieving may be substituted for thermal stress-relieving. Flush-welded patches or new sections may be applied to stayed plates without limitations of size or plate thickness.

Threaded stays may be replaced by welded stays provided that in the judgment of the authorized inspector the plate adjacent to the staybolt has not been materially weakened by deterioration or wasting away. All material requirements of the applicable section of the construction or installation code governing welded stays shall be met except that stress-relieving other than thermal means may be used.

875—203.9 91.9(89) Boiler door latches. A watertube boiler shall have the firing doors of the inward opening type, unless such doors are provided with substantial and effective latching or fastening devices or are otherwise so constructed as to prevent them when closed doors from being blown open by pressure on the furnace side. These latches or fastenings shall be of the positive, self-locking type. Friction contacts, latches, and bolts actuated by springs shall not be used. The foregoing requirements for latches or fastenings shall not apply to coal openings on downdraft or similar furnaces.

All other doors, except explosion doors, not used in the firing of the boiler may be provided with bolts or fastenings in lieu of self-locking latching devices. Explosion doors, if used and located in the setting walls within seven feet of the firing floor or operating platform, shall be provided with substantial deflectors to divert the blast.

875—203.10 91.10(89) Clearance.

91.10(1) All objects installed prior to August 9, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

91.10(2) This subrule applies to installations and re-installations after August 9, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

875—203.11 91.11(89) Ladders and runways Fall protection. Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

91.11(1) Runway platform. When necessary for safety a steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 of standard construction shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

91.11(2) Fall protection system. A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

875—203.12 91.12(89) Exit from rooms containing objects. All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

875—203.13 91.13(89) Air and ventilation. A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations.

The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (BTUs Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute and the total air delivered shall be equal to or greater than shown above.

875—203.14 91.14(89) Condensate return tank. Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

875—203.15(89) Nuclear power plant components. Nuclear power systems shall be designed, manufactured, installed, stamped, inspected, repaired and maintained in accordance with the ASME Code, Section III, for the year of construction or installation.

875—203.16 91.15(89) Conditions not covered. For any Any condition or modification not covered governed by these rules, the ASME Code for New Installations (1995 with 1997 addenda) shall apply be governed by the construction or installation code.

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875—203.17(89) Stamping of Iowa identification number. All objects shall be stamped with an Iowa identification number followed by an "IA," the letters and figures to be not less than a height of 5/16 of an inch. Stamping of the Iowa identification number shall be located on steel objects below the ASME Code stamping. When construction of the object does not allow the direct stamping of an object, a metal tag the size of 1 inch by 2½ inches shall be affixed to the object with the Iowa identification number. This tag shall be attached as closely as possible to the manufacturer's data plate of the object. For objects covered by Iowa Code chapter 89 which are unstamped, state inspectors and special inspectors shall assign numbers as directed by the division.

875—203.18 91.16(89) Nonstandard objects. If a nonstandard object as defined in rule 875—200.2(89) is to be installed in Iowa, all of the following conditions must first be met. *The following conditions are required for nonstandard objects.*

203.18(1) 91.16(1) The blueprints and design calculations for construction of the object must be submitted to the labor commissioner for review and approval before any installation work is commenced. All units of measure on submitted paperwork must be scaled to U.S. customary United States units of measure. All documents must be provided in the English language.

203.18(2) 91.16(2) The blueprints and design calculations for construction of the object must be certified by a professional engineer who is registered *licensed* in any state of the United States for the design of objects. *The An authorized inspector must sign the manufacturer's data report or design documentation records must be signed by a special inspector who is commissioned by the labor commissioner or by a division employee holding a National Board commission and a state commission.*

203.18(3) 91.16(3) The blueprints and design calculations of these objects shall be prepared utilizing a specified, stated, known engineering standard such as the DIN, ISO, BSI, ASME, JIS or CNS.

203.18(4) 91.16(4) All documentation verifying quality and code compliance shall be submitted to the division for review and approval by the labor commissioner unless there is an agreement which provides for reciprocity between the division and the jurisdiction in which the object was built. The quality assurance system shall include, but is not limited to:

a. Quality assurance documentation. The quality assurance documentation shall include the following: statement of authority, scope of work addressed, organizational charts, quality control responsibilities, drawings and design, calculation, specification control, order entry, purchasing, training, audits, auditor training, material control, examination and inspection programs, correction and detection of non-conformities, welding controls, nondestructive examination and personnel qualifications, heat treatment, calibration of test equipment, records retention, sample forms, and duties of the authorized inspector; or the requirements of ANSI/ASQC Q 91-1994 or ASME NQA 1-1989 with IC-1992 addenda *the National Board Inspection Code.*

b. Certification from a registered professional engineer *licensed in any state of the United States* and knowledgeable about the code of construction and installation; and

c. Implementation of all phases of the quality assurance system(s) and certification(s) shall be demonstrated.

203.18(5) 91.16(5) An English language version of the documents described in subrule 203.18(4) *91.16(4)*, shall be submitted for review by the labor commissioner. The English language versions of the documents shall control during any implementation or demonstration of the fabrication of the nonstandard object. The documentation and certification described in subrule 203.18(4) *91.16(4)*, if in a language other than English, must include a statement that, in case of a conflict, the translated English language version shall prevail.

203.18(6) 91.16(6) The fees and costs for the review shall be borne by the manufacturer, owner, or user of the object requesting the review and shall include, but not be limited to, the inspection fees set forth in rule 875—200.4(89) *875—90.7(89)*. Fees and costs shall include travel, lodging, meals, and incidental costs associated with performing the review or audit. If the review is outside the United States, the party or parties requesting the review shall be responsible to arrange all travel permits and visas. A party requesting a review or audit shall guarantee access to all phases of manufacture, regardless of who is the owner of a relevant facility.

203.18(7) 91.16(7) After a manufacturer has received permission to construct a nonstandard object for an Iowa location, the manufacturer shall construct the object complying with all quality standards approved and certified for Iowa installation and construction. Compliance with this rule during the installation and construction phases shall not in any way be viewed as creating an exception from any provisions of Iowa Code chapter 89 or IAC 875—Chapters 200 to 209 *90 to 96.*

875—203.19(89) Notification of explosion. Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. *Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.*

875—203.20 91.17(89) Lap seam crack. The shell or drum of an object in which a lap seam crack is discovered along a longitudinal, riveted joint shall be immediately discontinued from use. If the object is not more than 15 years of age, a complete new course of the original thickness may be installed at the discretion of the inspector. Patching is prohibited.

875—91.18(89) English language and U.S. customary units required. All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

875—203.21(89) Evaluation of design margin. The provisions of the Welding Research Council "Bulletin," No. 435, September 1998, are adopted by reference as they pertain to design margin in construction, repairs, and alterations. These provisions shall be utilized where a design margin of less than four is used for design construction, repair, or alteration of boiler pressure vessels as defined in Iowa Code chapter 89.

These rules are intended to implement Iowa Code chapter 89.

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ITEM 6. Amend **875—Chapters 204 and 205** as follows:

CHAPTER 204 92

NEW INSTALLATIONS OF POWER BOILERS

875—92.1(89) Scope. *This chapter applies to all power boilers, and it applies to miniature power boilers installed after August 9, 2006. Chapter 93 applies to miniature power boilers installed prior to August 9, 2006.*

875—204.1 92.2(89) Construction criteria.

204.1(1) 92.2(1) Installations—*from July 1, 1959, to June 30, 1996. No power boiler shall be installed from July 1, 1959, to June 30, 1996, unless it has been designed, manufactured, inspected, installed, and stamped in accordance with the requirements of ASME Code for Boilers and Pressure Vessels Section I and has been registered with the National Board of Boiler and Pressure Vessel Inspectors.*

204.1(2) 92.2(2) Installations *after from July 1, 1996, to August 9, 2006. No power boiler shall be installed from July 1, 1996, to August 9, 2006, unless it has been designed, manufactured, stamped, installed, and inspected to a recognized national or international standard such as ASME, German Institute of Standards (DIN), British Standards Institute (BSI), Japanese Industrial Standards (JIS), or Canadian National Standards, and has been registered with the National Board. Only national and international standards acceptable to the division of labor services may be utilized.*

875—204.2 92.3(89) New installations Codes adopted by reference.

204.2(1) 92.3(1) Installations—*from July 1, 1983, to December 31, 1988. All new installations from July 1, 1983, to December 31, 1988, of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1986) with 1988 addenda (1983). Boiler installations shall also comply with ANSI/ASME CSD-1 (1982), excluding the provisions for listing or labeling by a nationally recognized testing agency.*

204.2(2) 92.3(2) Installations—*from January 1, 1989, to December 31, 1990. All new installations from January 1, 1989, to December 31, 1990, of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1986) with 1988 addenda. Boiler installations shall also comply with ANSI/ASME CSD-1 (1986 with 1988 addenda), excluding the provisions for listing or labeling by a nationally recognized testing agency.*

204.2(3) 92.3(3) Installations—*from January 1, 1991, to June 30, 1995. All new installations from January 1, 1991, to June 30, 1995, of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1989) with 1990 addenda. Boiler installations shall also comply with ANSI/ASME CSD-1 (1990 1988 with CSD-1a-1989 and CSD-1b-1990 addenda), excluding the provisions for listing or labeling by a nationally recognized testing agency.*

204.2(4) 92.3(4) Installations—*from July 1, 1996, to December 31, 1997. All new installations between July 1, 1996, and December 31, 1997, of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1992 with 1994 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Gas-fired jacketed steam kettles*

may be installed provided they are designed, installed, inspected and stamped in accordance with ASME Code for Boilers and Pressure Vessels Section VIII, Division I, Appendix 19 (1995). Unfired steam boilers shall not be constructed under the provisions of Section VIII. Installations shall also comply with ANSI/ASME CSD-1 (1995 with 1996 addenda).

204.2(5) 92.3(5) Installations—*from after January 1, 1998, to December 31, 2000. All new installations from January 1, 1998, to December 31, 2000, of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1995 with 1997 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Unfired steam boilers shall not be constructed under the provisions of Section VIII. Boiler installations shall also comply with ANSI/ASME CSD-1 (1995 with 1996 addenda).*

204.2(6) 92.3(6) Installations ~~on or after~~ *from January 1, 2001, to August 9, 2006. On or after All installations from January 1, 2001, to August 9, 2006, all new installations of boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (1998 with 1999 and 2000 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Unfired steam boilers shall not be constructed under the provisions of Section VIII. Boiler installations shall also comply with ANSI/ASME CSD-1 (1995 with 1999 addenda).*

92.3(7) Installations *after August 9, 2006. On or after August 9, 2006, all installations, including reinstalled boilers, shall be installed, designed, manufactured, stamped and inspected in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section I (2004 with 2005 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Unfired steam boilers shall not be constructed under the provisions of Section VIII. Power boiler installations from 400,000 to 12,500,000 Btu's shall also comply with ANSI/ASME CSD-1 (2004).*

CHAPTER 205

EXISTING INSTALLATIONS OF POWER BOILERS

875—205.1 92.4(89) Maximum allowable working pressure for steel boilers. *This rule applies to power boilers installed prior to July 1, 1983. A boiler constructed with fusion-welded seams and not X-rayed and stress relieved during construction shall not be operated at a pressure in excess of 15 pounds per square inch. Boilers with fusion-welded seams that are X-rayed and stress relieved and constructed to ASME Code requirements in effect when the boiler was constructed may be operated at a pressure as established in subrules 92.4(1) and 92.4(2).*

205.1(1) 92.4(1) Working pressure—shell. Calculation. *The maximum allowable working pressure on the shell of a boiler shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the course, and the factor of safety allowed by these rules. The formula for determining the maximum allowable working pressure is:*

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$\frac{TSStE}{RFS}$	=	Maximum allowable working pressure, psig.
		Where:
TS	=	Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.
t	=	Minimum thickness of shell plates of the weakest course, in inches.
E	=	Efficiency of longitudinal joint calculated pursuant to ANSI/ASME BPV I PG-27 (1998 with 1999 and 2000 addenda) construction or installation code.
R	=	Inside radius of the weakest course of the shell or drum, in inches.
FS	=	Factor of safety specified in subrule 205.1(2) 92.4(2).

205.1(2) 92.4(2) Factor of safety.

a. The lowest factor of safety on boilers shall be four, except for horizontal tubular boilers having continuous lap seams more than 12 feet in length where the factor of safety shall be eight.

b. Boilers which that are reinstalled of and have lap riveted construction or seams of butt and double strap riveted construction shall use ASME Code, Section I (1971).

c. ~~A boiler constructed with fusion-welded seams and not X-rayed and stress relieved during construction shall not be operated at a pressure in excess of 15 pounds per square inch. Boilers with fusion-welded seams which are X-rayed and stress relieved and constructed to ASME Code requirements in effect when the boiler was constructed may be operated at a pressure as established in subrule 92.4(1).~~

d c. The inspector shall increase the factor of safety shall be increased by the inspector if the conditions and safety of the boiler demand it.

875—205.2 92.5(89) Maximum allowable working pressure and temperature for cast Cast iron headers and mud drums. *This rule applies to power boilers installed prior to July 1, 1983.*

205.2(1) 92.5(1) Tube boiler. The maximum allowable working pressure on a ~~water tube~~ watertube boiler, the tubes of which are secured in cast iron or malleable iron headers or which have cast iron mud drums, shall not exceed 160 psig or a temperature of 250°F.

205.2(2) 92.5(2) Maximum steam pressure. The maximum steam pressure on any boiler *constructed of cast iron* in which steam is generated, ~~if constructed of cast iron,~~ shall be 15 psig.

875—205.3 92.6(89) Rivets. *This rule applies to power boilers installed prior to July 1, 1983.* When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, shall be selected from ASME Code, Section I (1971).

875—205.4 92.7(89) Safety valves. *This rule applies to power boilers installed prior to July 1, 1983.*

205.4(1) 92.7(1) The use of weighted-lever safety valves or safety valves having either the seat or disk of cast iron is prohibited. All power boilers shall have direct, spring-loaded, pop-type safety valves that conform to the requirements of ASME Code, Section I (1998 with 1999 and 2000 addenda) construction or installation code.

205.4(2) 92.7(2) Each boiler shall have at least one safety valve. All boilers with more than 500 square feet of water heating surface or an electric power input of more than 1100 kilowatts shall have two or more safety valves.

205.4(3) 92.7(3) The safety valve or valves shall be connected to the boiler independent of any other steam connection and attached as close as possible to the boiler without unnecessary intervening pipe or fittings.

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205.4(4) 92.7(4) No valves of any type shall be placed between the safety valve and the boiler. If an escape pipe is used, no valve shall be placed between the safety valve and the atmosphere. When an escape pipe is used, it shall be at least full size of the safety-valve *safety valve* discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. Any elbow on an

escape pipe shall be located close to the ~~safety-valve~~ *safety valve* outlet or the escape pipe and shall be anchored and supported securely. All safety valve discharges shall be so located or piped as to be carried away from walkways or platforms. When the safety valve is vented to the outside atmosphere, the second escape pipe shall be arranged as shown in Figure 1.

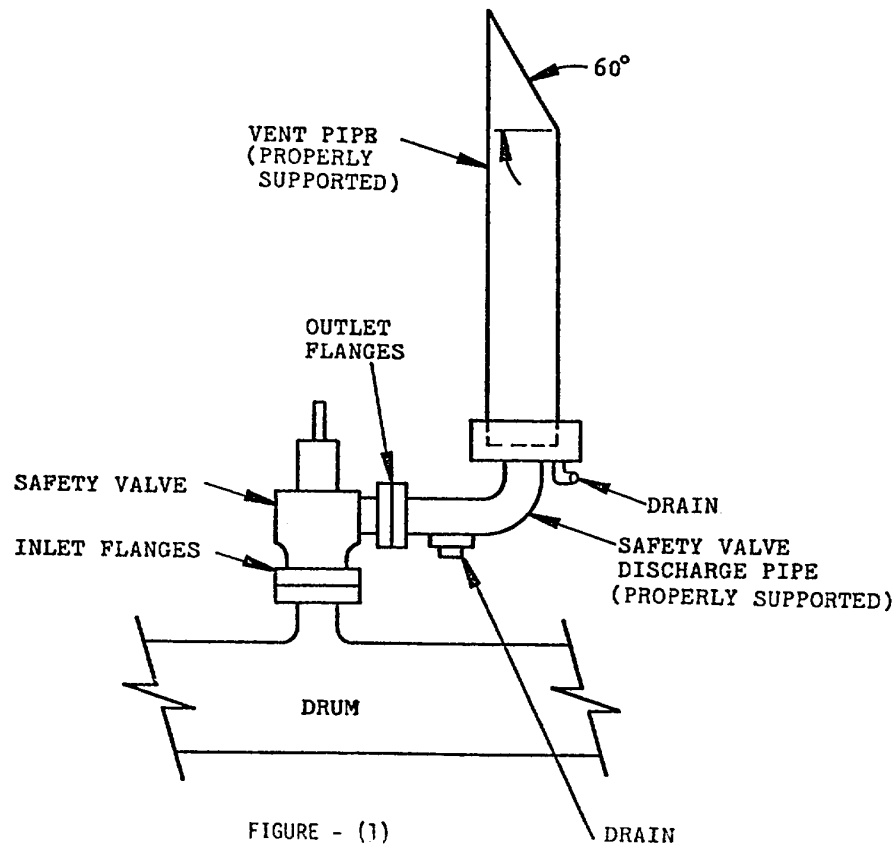


FIGURE - (1)

205.4(5) 92.7(5) The ~~safety-valve~~ *safety valve* capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 5 percent above the highest pressure to which any valve is set and in no case to more than 6 percent above maximum allowable working pressure.

205.4(6) 92.7(6) One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3 percent above the maximum allowable working pressure, but the range setting of all the safety valves on a boiler shall not exceed 10 percent of the highest pressure at which any valve is set.

205.4(7) 92.7(7) When two or more boilers operating at different pressures and ~~safety-valve~~ *safety valve* settings are interconnected, the lowest pressure boilers or interconnected

piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

205.4(8) 92.7(8) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not including return traps), safety valves shall not be set at a pressure greater than 94 percent of the lowest pressure maintained in the supply main feeding the boiler.

205.4(9) 92.7(9) The minimum safety valve or ~~safety-relief~~ *safety-relief* valve relieving capacity shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface and waterwall heating surface as given in the following table. This method shall not be used on electric boilers, waste heat boilers and forced-flow steam generators without a fixed steam and water line.

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Minimum Pounds of Steam Per Hour Per
Square Foot of Heating Surface

	Firetube Boilers	Watertube Boilers
Boiler Heating Surface:		
Hand Fired	5	6
Stoker Fired	5	8
Oil, Gas, or Pulverized Fuel Fires	8	10
Waterwall Heating Surface:		
Hand Fired	8	8
Stoker Fired	10	12
Oil, Gas, or Pulverized Fuel Fires	14	16

205.4(10) 92.7(10) Safety valve sizing.

a. When a boiler is fired only by a gas having a heat value not in excess of 200 Btu's per cubic feet, the minimum safety valve or safety-relief valve relieving capacity may be based on the value given for hand-fired boilers above.

b. The minimum safety valve or safety-relief valve relieving capacity for electric boilers shall be 3½ pounds per hour per kilowatt input.

c. Maximum steaming capacity for safety valves shall be the value stated on design documents or shall be calculated by multiplying horsepower by 34.5.

875—205.5 92.8(89) Boiler feeding. *This rule applies to power boilers installed prior to July 1, 1983.*

205.5(1) 92.8(1) Each boiler shall have a feed supply which that will permit it to be fed at any time while under pressure. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump, injector, or inspirator. One source of feed is directly from the water main mains at a pressure 6 percent greater than the set pressure of the safety valve with the highest pressure setting. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input prior to the water level reaching the lowest permissible level. The feedwater shall be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell or furnace sheets, directly against surfaces exposed to products of combustion, or directed to surfaces subject to radiation from the fire. The feed piping to the boiler shall be provided with a check valve near the boiler and a stop valve between the check valve and the boiler.

205.5(2) 92.8(2) When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the. The stop valve to shall be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable.

205.5(3) 92.8(3) Where deaerating heaters are not employed, it is recommended that the temperature of the feedwater be not less than 120° F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, it is recommended that the minimum feedwater temperature be not less than 215° F so that dissolved gases may be thoroughly released.

875—205.6 92.9(89) Water level indicators. *This rule applies to power boilers installed prior to July 1, 1983. Outlet*

connections that allow the escape of an appreciable amount of steam or water shall not be placed on the piping. However, this rule does not prohibit the installation of Except for damper regulator regulators, feedwater regulator feed water regulators, low-water fuel cutoff cutouts, drains, or steam gages, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom, outlet connections shall not be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least ¾-inch piping size. The drain must have a valve and the drain to be piped to a safe location. Each boiler shall have three or more gage cocks located within the visible length of the water glass, except when the boiler has two water glasses located at the same horizontal lines. Only two gage cocks are required on boilers not over 36 inches in diameter with a heating surface not exceeding 100 square feet. Gage cocks are not required on electric boilers.

875—205.7 92.10(89) Pressure gages. *This rule applies to power boilers installed prior to July 1, 1983. Each boiler shall have a pressure gage so located that the gage is readable. The pressure gage shall be installed so that it shall at all times indicate the pressure in the boiler. Each steam boiler shall have the pressure gage connected to the steam space or to the water column or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves shall be located between the gage and the boiler. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing out. For a steam boiler the gage or connection shall contain a siphon or equivalent device which that will develop and maintain a water seal that will prevent steam from entering the gage tube. Pressure gage connections shall be suitable for the maximum allowable working pressure and temperature, but if the temperature exceeds 406° F, brass or copper pipe or tubing shall not be used. The connections to the boiler, except the siphon, if used, shall not be less than ¼-inch standard pipe size but where steel or wrought-iron pipe or tubing is used, they shall not be less than ½-inch inside diameter. The minimum size of a siphon, if used, shall be ¼-inch inside diameter. The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case to less than 1½ times this pressure.*

875—205.8 92.11(89) Steam stop valves. *This rule applies to power boilers installed prior to July 1, 1983. Each steam outlet from a boiler, except safety valve and water-column connections, shall be fitted with a stop valve located as close as practicable to the boiler. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample freeblowing free-blowing drain between them. The discharge of the drain shall be piped clear of the boiler setting. The stop valves shall consist of one automatic nonreturn valve next to the boiler and a second valve of the outside screw and yoke type.*

875—205.9 92.12(89) Blowoff connection. *This rule applies to power boilers installed prior to July 1, 1983. Each boiler shall have a blowoff pipe fitted with valve or cock, in direct connection with the lowest water space practicable.*

When the maximum allowable working pressure exceeds 125 psig, the blowoff pipe shall be at least extra heavy sched-

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ule 80 from the boiler to the valve or valves and shall run full size without reducers or bushings. ~~Galvanized and galvanized materials shall not be used.~~

All fittings between the boiler and valve shall be steel or at least ~~extra-heavy~~ *schedule 80* fittings of bronze, brass, malleable iron, or cast iron, all of which shall be suitable for the pressure and temperature. In case of replacement of pipe or fittings in the blowoff lines, as specified in this paragraph, they shall be installed in accordance with the rules of new installations.

When the maximum allowable working pressure exceeds 125 psig, each bottom blowoff pipe shall be fitted with at least a 250-pound standard valve or cock. ~~Preferably two~~ Two valves, or a valve and a cock, should be used on each blowoff, ~~in which case such valves, or valve cock, shall be extra-heavy.~~

~~A~~ When exposed to direct furnace heat, a bottom blowoff pipe ~~when exposed to direct furnace heat~~ shall be protected by firebrick or other heat resisting material so arranged that the pipe may be inspected.

An opening in the boiler setting for a blowoff pipe shall be arranged to provide for free expansion and contraction.

875—205.10(89) Conditions not covered. Any condition not specifically covered by these rules shall be governed by the construction or installation code.

These rules are intended to implement Iowa Code chapter 89.

ITEM 7. Amend **875—Chapter 206** as follows:

CHAPTER 206 93
MINIATURE BOILERS INSTALLED
PRIOR TO AUGUST 9, 2006

875—206.1 93.1(89) Scope—miniature boilers. Rules 206.1(89) to 206.3(89) apply to boilers which do not exceed the following limits: Sixteen-inch inside diameter of shell, 20 square feet of heating surface, 5 cubic feet gross volume, exclusive of casing and insulation, and 100 psig maximum allowable working pressure. Where any of the above limits are exceeded, the rules for power boilers apply. If the boiler meets the “miniature” classification, rules 206.1(89) to 206.3(89) shall supplement the rules for power boilers and take precedence over them when there is a conflict. *This chapter sets forth requirements in addition to those contained in 875—Chapter 92 for boilers that:*

1. Have a heating surface of 20 square feet or less;
2. Have a gross volume of 5 cubic feet or less, excluding casing and insulation;
3. Have an inside shell diameter of 16 inches or less;
4. Have 100 psig maximum allowable working pressure; and
5. Were installed prior to August 9, 2006.

For objects covered by this chapter, if there is a conflict between this chapter and Chapter 92, this chapter shall govern the issue.

875—206.2 93.2(89) New installations. Codes adopted by reference.

206.2(1) 93.2(1) Installations—*from March 31, 1967, to June 30, 1995.* No miniature boiler shall be installed unless it has been *Installations from March 31, 1967, to June 30, 1995, shall be* designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code, Section I, for miniature boilers and is inspected and stamped in accordance with the requirements of the Na-

tional Board and the requirements of ANSI/ASME CSD-1 1992 with 1994 addenda.

206.2(2) 93.2(2) Installations—*from July 1, 1996, to December 31, 1997.* All miniature boilers covered by this chapter installed and reinstalled *Installations and reinstalled from July 1, 1996, to December 31, 1997,* shall be constructed and installed in accordance with national and international standards such as DIN, BSI, ASME, JIS, or Canadian National Standards. Only national and international standards acceptable to the division of labor services may be utilized. Miniature boilers installed and reinstalled after January 1, 1996, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 1995.

206.2(3) 93.2(3) Installations—*from January 1, 1998, to December 31, 2000.* All installed and reinstalled miniature boilers covered by this chapter *Installations and reinstalled from January 1, 1998, to December 31, 2000,* shall be constructed and installed in accordance with national and international standards such as DIN, BSI, ASME, JIS, or CNS (1995 with 1997 addenda). Only national and international standards acceptable to the division may be utilized. Miniature boilers installed and reinstalled after January 1, 1998, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 (1995 with 1997 addenda).

206.2(4) 93.2(4) Installations ~~on or after~~ *from January 1, 2001, to August 9, 2006.* *Installations and reinstalled from On or after January 1, 2001, to August 9, 2006,* all installed and reinstalled miniature boilers covered by this chapter shall be constructed and installed in accordance with national and international standards such as DIN, BSI, ASME, JIS, or CNS (1998 with 1999 and 2000 addenda). Only national and international standards acceptable to the division may be utilized. Miniature boilers installed and reinstalled on or after January 1, 2001, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 (1998 with 1999 addenda).

206.2(5) Inspections. All miniature boilers shall be inspected by the commissioner or a special inspector upon completion of installation and at least annually thereafter shall be subjected to a regular internal inspection.

875—206.3(89) Existing installations.

206.3(1) Maximum allowed working pressure. The maximum allowed working pressure is to be determined by 875—Chapter 205.

206.3(2) Safety valves. Each miniature boiler shall be equipped with a sealed spring-loaded pop safety valve of not less than ½-inch pipe size. The minimum relieving capacity of the safety valve shall be determined in accordance with 875—205.4(89). In addition to these requirements, the safety valve shall have sufficient capacity to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6 percent above maximum allowable working pressure.

206.3(3) Steam stop valves. Each steam line from a miniature boiler shall be provided with a stop valve located as close to the boiler shell or drum as is practicable except when the boiler and steam receiver are operated as a closed system.

206.3(4) Water gages.

a. Miniature boilers for operation with a definite water level shall be equipped with a glass water gage for determin-

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ing the water level. The lowest permissible water level for vertical boilers shall be at a point one-third of the height of the shell above the bottom head or tube sheet. Where the boiler is equipped with an internal furnace, the water level shall not be less than one-third of the length of the tubes above the top of the furnace tube sheet. In the case of small boilers operated in a closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bull's eye type may be used.

b. Miniature boilers shall have the lowest visible part of the water gage glass located at least 1 inch above the lowest permissible water level specified by the manufacturer.

206.3(5) Feedwater supply.

a. Miniature boilers shall be provided with at least one feed pump or other feeding device, except where it is connected to a water main carrying sufficient pressure to feed the boiler or where it is operated with no extraction of steam (closed system). In the latter case, in lieu of a feeding device, a suitable connection or opening shall be provided to fill the boiler when cold. Such connection shall be no less than 1/2-inch pipe size for iron or steel pipe and 1/4 inch for brass or copper pipe.

b. The feed pipe shall be provided with a check valve and a stop valve of a size not less than that of the pipe. The feed water may be delivered through the blowoff opening if desired.

206.3(6) Blowoff. Miniature boilers shall be equipped with a blowoff connection, not less than 1/2-inch pipe size, located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than 1/2-inch pipe size.

206.3(7) Washout openings. Miniature boilers exceeding 12 inches internal diameter or having more than 10 square feet of heating surface shall be fitted with not less than three brass washout plugs of 1-inch pipe size which shall be screwed into openings in the shell near the bottom. In miniature boilers of the closed type system heated by removable internal electric heating elements, the openings for these elements when suitable for cleaning purposes may be substituted for washout openings. Boilers not exceeding 12 inches internal diameter and having less than 10 square feet of heating surface need have not more than two 1-inch openings for cleanouts, one of which may be used for the attachment of the blowoff valve; these openings shall be opposite to each other where possible. All threaded openings shall be opposite to each other where possible. All threaded openings in the boiler shall be provided with a riveted or welded reinforcement to give four full threads therein.

Electric boilers of a design employing a removable top cover flange for inspection and cleaning need not be fitted with washout openings.

206.3(8) Fixtures and fittings. All valves, pipe fittings, and appliances connected to a miniature boiler shall be equal to at least the minimal requirements of the construction or installation code, and rated for not less than the maximum allowable working pressure of the miniature boiler, and in no case will the rating be for less than 125 pounds.

875—93.3(89) Maximum working pressure. The maximum allowed working pressure is to be determined by rule 875—92.4(89).

875—93.4(89) Safety valves. Boilers covered by this chapter shall be equipped with a sealed spring-loaded pop safety valve of not less than 1/2-inch pipe size. The minimum relieving capacity of the safety valve shall be determined in accordance with rule 875—92.7(89). In addition to these require-

ments, the safety valve shall have sufficient capacity to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6 percent above maximum allowable working pressure.

875—93.5(89) Steam stop valves. Each steam line from a miniature boiler shall be provided with a stop valve located as close to the boiler shell or drum as is practicable except when the boiler and steam receiver are operated as a closed system.

875—93.6(89) Water gages.

93.6(1) Miniature boilers for operation with a definite water level shall be equipped with a glass water gage for determining the water level. The lowest permissible water level for vertical boilers shall be at a point one-third of the height of the shell above the bottom head or tube sheet. When the boiler is equipped with an internal furnace, the water level shall not be less than one-third of the length of the tubes above the top of the furnace tube sheet. In the case of small boilers operated in a closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bull's eye type may be used.

93.6(2) Miniature boilers shall have the lowest visible part of the water gage glass located at least 1 inch above the lowest permissible water level specified by the manufacturer.

875—93.7(89) Feedwater supply.

93.7(1) Except for miniature boilers operating without the extraction of steam, miniature boilers shall be provided with at least one feed pump or other feeding device unless the boiler feed line is connected to a water main carrying sufficient pressure to feed the boiler. In the latter case, in lieu of a feeding device, a suitable connection or opening shall be provided to fill the boiler when cold. Such connection shall be no less than 1/2-inch pipe size for iron or steel pipe and 1/4 inch for brass or copper pipe.

93.7(2) The feed pipe shall be provided with a check valve and a stop valve of a size not less than that of the pipe. The feed water may be delivered through the blowoff opening if desired.

875—93.8(89) Blowoff. Miniature boilers shall be equipped with a blowoff connection, not less than 1/2-inch pipe size, located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than 1/2-inch pipe size.

875—93.9(89) Washout openings. Miniature boilers exceeding 12 inches internal diameter or having more than ten square feet of heating surface shall be fitted with not less than three brass washout plugs of 1-inch pipe size that shall be screwed into openings in the shell near the bottom. In miniature boilers of the closed type system heated by removable internal electric heating elements, the openings for these elements when suitable for cleaning purposes may be substituted for washout openings. Boilers not exceeding 12 inches internal diameter and having less than ten square feet of heating surface need not have more than two 1-inch openings for cleanouts, one of which may be used for the attachment of the blowoff valve; these openings shall be opposite each other where possible. All threaded openings shall be opposite each other where possible. All threaded openings in the boiler shall be provided with a riveted or welded reinforcement to give four full threads therein.

Electric boilers of a design employing a removable top cover flange for inspection and cleaning need not be fitted with washout openings.

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875—93.10(89) Fixtures and fittings. All valves, pipe fittings, and appliances connected to a miniature boiler shall be equal to at least the minimal requirements of the construction or installation code, and rated for not less than the maximum allowable working pressure of the miniature boiler, and in no case will the rating be for less than 125 pounds.

These rules are intended to implement Iowa Code chapter 89.

ITEM 8. Amend **875—Chapter 207** as follows:

CHAPTER 207 94

INSTALLATION OF STEAM HEATING BOILERS,
HOT WATER HEATING BOILERS AND
HOT WATER SUPPLY BOILERS

875—207.1 94.1(89) Scope. This chapter shall apply to:

1. **94.1(1)** Steam boilers for operation at pressures not exceeding 15 psig;

2. **94.1(2)** Hot water heating boilers for operation at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the boiler outlet;

3. **94.1(3)** Hot water supply boilers for operation at pressures not exceeding 160 psig or temperatures not exceeding 250° 210 °F at or near the boiler outlet.

4. **EXCEPTION:** Boilers at swimming pools or spa water heaters under the jurisdiction of the Iowa department of public health pursuant to Iowa Code chapter 135I.

875—207.2 94.2(89) New installations. Codes adopted by reference.

207.2(1) 94.2(1) Installations—*from July 1, 1960, to June 30, 1983.* All boiler installations and reinstalled boilers covered by this chapter installed in this state *Installations and reinstallations* from July 1, 1960, to June 30, 1983, shall be constructed and installed in accordance with the ASME Code for Boilers and Pressure Vessels, Section IV (1960).

207.2(2) 94.2(2) Installations—*from July 1, 1983, to December 31, 1988.* All boiler installations and reinstalled boilers covered by this chapter *Installations and reinstallations* from July 1, 1983, to December 31, 1988, shall be constructed and installed in accordance with ASME Code for Boilers and Pressure Vessels, Section IV (1986) with 1988 addenda (1983) and ASME Safety Code, CSD-1, Boiler Installations (1982), excluding the provisions for listing or labeling by a nationally recognized testing agency.

207.2(3) 94.2(3) Installations—*from January 1, 1989, to December 31, 1990.* All boiler installations and reinstalled boilers covered by this chapter *Installations and reinstallations* from January 1, 1989, to December 31, 1990, shall be constructed and installed in accordance with ASME Code for Boilers and Pressure Vessels, Section IV (1986), with 1988 addenda) and ASME Safety Code, CSD-1, Boiler Installations (1982), excluding the provisions for listing or labeling by a nationally recognized testing agency.

207.2(4) 94.2(4) Installations—*from January 1, 1991, to June 30, 1996.* All boiler installations and reinstalled boilers covered by this chapter *Installations and reinstallations* from January 1, 1991, to June 30, 1996, shall be constructed and installed in accordance with ASME Code for Boilers and Pressure Vessels, Section IV (1989) with 1990 addenda) and ANSI/ASME CSD-1, (1988), excluding the provisions for listing or labeling by a nationally recognized testing agency.

207.2(5) 94.2(5) Installations—*from July 1, 1996, to December 31, 1997.* All new installations of boilers, including reinstalled boilers, *between Installations and reinstallations* from July 1, 1996, and to December 31, 1997, shall be designed, manufactured, installed, inspected and stamped in

accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section IV (1992) with 1994 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Boilers installed and reinstalled after July 1, 1996, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 1995.

207.2(6) 94.2(6) Installations—*from January 1, 1998, to December 31, 2000.* All new installations of boilers, including reinstalled boilers, *Installations and reinstallations* from January 1, 1998, to December 31, 2000, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section IV (1995 with 1997 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Boilers installed and reinstalled after January 1, 1998, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 (1995 with 1997 addenda).

207.2(7) 94.2(7) Installations on or after *from January 1, 2001, to August 9, 2006.* On or after January 1, 2001, all new installations of boilers, including reinstalled boilers, *Installations and reinstallations* from January 1, 2001, to August 9, 2006, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section IV (1998 with 1999 and 2000 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Boilers installed and reinstalled after January 1, 1998, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 (1998 with 1999 addenda).

207.2(8) 94.2(8) Installations on or after January 1, 2005—aluminum alloy sand castings. On or after January 1, 2005, new installations of boilers, including reinstalled boilers, may be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of ASME Code Cases 2382-1, 2393, and 2394.

94.2(9) Installations on or after August 9, 2006. *Installations and reinstallations on or after August 9, 2006, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section IV (2004 with 2005 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. The boilers must comply with the requirements of ANSI/ASME CSD-1 (2004).*

875—94.3(89) General requirements. This rule applies to all objects covered by this chapter and installed prior to August 9, 2006.

94.3(1) Instruments, fittings and controls mounted inside boiler jackets. Any or all instruments, fittings and controls required by this chapter may be installed inside of boiler jackets provided the water gage and pressure gage on a steam boiler or the thermometer and pressure gage on a wa-

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ter boiler are visible through an opening or openings at all times.

94.3(2) Electrical code compliance.

a. Wiring. All wiring for controls, heat-generating apparatus and other appurtenances necessary for the operation of the boiler or boilers shall be in accordance with the National Electric Code (1992). All boilers supplied with factory-mounted and factory-wired controls, heat-generating apparatus and other appurtenances necessary for the operation of the boilers shall be installed in accordance with the provisions of nationally recognized standards.

b. Circuitry. The control circuitry shall be grounded and shall operate at 150 volts or less. One of the two following systems may be employed to provide the control circuit:

(1) Two-wire, nominal 120-volt system with separate equipment ground conductor as follows:

This system shall consist of the line, neutral and equipment ground conductors. The control panel frame and associated control circuitry metallic enclosures shall be electrically continuous and be bonded to the equipment ground conductor.

The equipment ground conductor and the neutral conductor shall be bonded together at their origin in the electrical system for objects installed prior to August 9, 2006.

The line side of the control circuit shall be provided with a time delay fuse sized as small as practicable.

(2) Two-wire, nominal 120-volt system obtained by using an isolation transformer as follows:

The two-wire control circuit shall be obtained from the secondary side of an isolation transformer, shall be electrically continuous and shall be bonded to a convenient cold water pipe. All metallic enclosures of control components shall be securely bonded to this ground control circuit wire. The primary side of the isolation transformer will normally be a two-wire source with a potential 230, 208 or 440 volts.

Both sides of the two-wire primary circuit shall be fused. The hot leg on the load side of the isolation transformer shall be fused as small as practicable, and shall not be fused above the rating of the isolation transformer.

c. Shutdown switches and circuit breakers. It is recommended that a manually operated remote heating plant shutdown switch or circuit breaker be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

94.3(3) Safety and safety relief valve discharge piping. When a discharge pipe is used, its internal cross-sectional areas shall not be less than the full area of the valve outlet or of the total of the valve outlets discharging therein and shall be as short and straight as possible and so arranged as to avoid undue stress on the valve or valves. When an elbow is placed on a safety valve or safety relief valve discharge pipe, the elbow shall be located close to the valve outlet.

94.3(4) Expansion and contractions. Provisions shall be made for the expansion and contraction of steam and hot water mains connected to boilers. Swing joints shall be provided when boilers are installed in batteries so that undue strain will not be transmitted to the boilers.

94.3(5) Return pipe connections. The return pipe connections of each boiler supplying a gravity-return steam heating system shall be so arranged as to form a loop so that the water in each boiler cannot be forced out below the safe water level.

94.3(6) Feed water connections.

a. Feed water, makeup water or water treatment shall be introduced into a boiler through the return piping system. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent feed water connection shall not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment shall not be introduced through openings or connections provided for inspection, cleaning, safety valves, safety-relief valves, blowoffs, water columns, water gage glasses, pressure gages or temperature gages.

b. The makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the return pipe system.

94.3(7) Oil heaters.

a. A heater for oil or other liquid harmful to boiler operation shall not be installed directly in the steam or water space within a boiler.

b. Where an external-type heater for such service is used, means shall be provided to prevent the introduction into the boiler of oil or other liquid harmful to boiler operation.

94.3(8) Bottom blowoff or drain valve.

a. Each boiler shall have a bottom blowoff or drain pipe connection fitted with a valve or cock connected with the lowest water space practicable, with the minimum size of blowoff piping and valves as specified below:

Minimum Required Safety or Safety-Relief Valve Capacity (Pounds of Steam Per Hour)	Size of Blowoff Valves (Inches)
Up to 500	3/4
501 to 1250	1
1251 to 2500	1 1/4
2501 to 6000	1 1/2
6001 and larger	2

NOTE: Multiply 1,000 by the relieving capacity in pounds of steam per hour to determine the Btu's of safety relief valve discharge capacity.

b. Any discharge piping connected to bottom blowoff or bottom drain connections shall be full size to the point of discharge.

875—207.3 94.4(89) Existing installations; steam heating boilers installed before July 1, 1960. All steam heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this rule.

207.3(1) 94.4(1) Safety valves.

a. Each steam boiler shall have one or more officially rated safety valves bearing the National Board "HV" stamp of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be set to relieve at a higher pressure than the maximum allowable working pressure of the boiler. For iron and steel bodied valves exceeding 2-inch pipe size, the drain hole or holes shall be tapped not less than 3/8-inch pipe size.

b. The safety valves shall be located in the top or side of the boiler. They shall be connected directly to a tapped or flanged opening in the boiler, to a fitting connected to the boiler by a short nipple, to a Y-base, or to a valveless header connecting steam or water outlets on the same boiler. Coil or header type boilers shall have the safety valve located on the steam outlet end. Safety valves shall be installed with their spindles vertical. The opening or connection between the

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boiler and any safety valve shall have at least the area of the valve inlet.

c. Safety valves $\frac{1}{2}$ -inch or more in diameter ~~or over used that are installed on a steam boiler shall have a hand-lifted device which that~~ will positively lift the disk from its seat at least $\frac{1}{16}$ inch when there is no pressure in the boiler. The seats and disks shall be of noncorrosive material.

d. Safety valves for a steam boiler shall be at least $\frac{1}{2}$ inch unless the boiler and radiating surfaces consist of a self-contained unit. Safety valves shall not be larger than $4\frac{1}{2}$ inches. The inlet opening shall have an inside diameter equal to or greater than the seat diameter.

e. The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

f. The minimum valve capacity in pounds per hour shall be equal to the steam generation as specified in 875—subrules 205.4(9) and 205.4(10) 92.7(9) and 92.7(10).

g. The safety valve capacity for each steam boiler shall be such that with the fuel burning equipment operated at maximum capacity the pressure will not rise more than 5 percent above the maximum allowable working pressure.

h. When operating conditions are changed or additional boiler heating surface is installed, the valve capacity shall meet the new conditions.

207.3(2) 94.4(2) Steam gages.

a. Each steam boiler shall have a steam gage or a compound steam gage connected to its steam space, its water column, or to its steam connection. The gage or connection shall contain a siphon or equivalent device ~~which that~~ will develop and maintain a water seal that will prevent steam from entering the gage tube. The connection shall be so arranged that the gage cannot be shut off from the boiler except by a cock placed in the pipe at the gage and provided with a tee or lever-handle arranged to be parallel to the pipe in which it is located when the cock is open. The connections to the boiler shall be not less than $\frac{1}{4}$ -inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, it shall be not less than $\frac{1}{2}$ -inch standard pipe size. The minimum size of a siphon, if used, shall be $\frac{1}{4}$ -inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe.

b. The scale on the dial of a steam boiler gage shall be graduated to not less than 30 psig nor more than 60 psig. The travel of the pointer from zero to 30 psig pressure shall be at least 3 inches on a compound gage, and effective stops shall be set at the limits of the gage readings on both the pressure and vacuum sides of the gage.

207.3(3) 94.4(3) Water gage glasses.

a. Each steam boiler shall have one or more water gage glasses attached to the water column or boiler by means of valved fittings not less than $\frac{1}{2}$ -inch pipe size with the lower fittings provided with a drain valve having an unrestricted drain opening not less than $\frac{1}{4}$ -inch diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure. Water gage glass fittings may be attached directly to a boiler.

b. The lowest visible part of the water gage glass shall be at least 1 inch above the lowest permissible water level recommended by the boiler manufacturer. With the boiler operating at this lowest permissible water level, there shall be no danger of overheating any part of the boiler.

c. Transparent material other than glass may be used for the water gage provided that the material will remain transparent and has proved suitable for the pressure, temperature and corrosive conditions expected in service.

207.3(4) 94.4(4) Water column and water level control pipes.

a. The minimum size of ferrous or nonferrous pipes connecting a water column to a steam boiler shall be 1 inch. No outlet connections, except for damper regulator, feedwater regulator, steam gages or apparatus which does not permit the escape of any steam or water, except for manually operated blowdowns, shall be attached to a water column or the piping connecting a water column to a boiler. If the water column, gage glass, low-water fuel cutoff or other water level control device is connected to the boiler by pipe and fittings, no shutoff valves of any type shall be placed in such pipe, and a cross or equivalent fitting to which a drain valve and piping may be attached shall be placed in the water piping connection at every right angle to facilitate cleaning. The water column ~~drain pipe~~ and valve shall be not less than $\frac{3}{4}$ -inch pipe size.

b. The steam connections to the water column of a horizontal firetube wrought boiler shall be taken from the top of the shell or the upper part of the head, and the water connection shall be taken from a point not above the center line of the shell. For a cast iron boiler, the steam connection to the water column shall be taken from the top of an end section or the top of the steam header, and the water connections shall be made on an end section not less than 6 inches below the bottom connection to the water gage glass.

207.3(5) 94.4(5) Pressure control.

a. ~~Each individual automatically fired steam boiler, in addition to the operating control for normal boiler operation, each individual, automatically fired steam heating boiler shall have a high-limit-pressure-actuated high-limit, pressure-actuated combustion control that will cut off the fuel supply to prevent the pressure from rising over 15 psig. The separate controls may have a common connection to the boiler. Upon replacement of the high-limit-pressure-actuated high-limit, pressure-actuated combustion control, controls with manual reset types shall be installed.~~

b. In a multiple boiler installation where the operating pressure control may be installed in a header or other point common to all boilers and could be isolated from any or all of the boilers, there shall be at least one ~~high-limit-pressure-actuated high-limit, pressure-actuated~~ combustion control mounted on each boiler.

c. No shutoff valve of any type shall be placed in the connection to the ~~high-limit-pressure-actuated high-limit, pressure-actuated~~ control. The control or connections shall contain a siphon or equivalent device ~~which that~~ will develop and maintain a water seal that will prevent steam from entering the control. The connections to the boiler shall not be less than $\frac{1}{4}$ -inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, ~~they the fittings~~ shall be not less than $\frac{1}{2}$ -inch standard pipe size. The minimum size of a siphon, if used, shall be $\frac{1}{4}$ -inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe where a manifold is used for a multiple control. The connection to the boiler shall not be less than $\frac{1}{4}$ -inch standard pipe size.

207.3(6) 94.4(6) Automatic low-water fuel cutoff or water-feeding device.

a. Each automatically fired steam or vapor system boiler shall have an automatic low-water fuel cutoff so located as to automatically cut off the fuel supply when the surface of the water falls to the lowest visible part of the water gage glass. If a water-feeding device is installed, it shall be so constructed that the water inlet valve cannot feed water into the

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boiler through the float chamber and so located as to supply requisite feedwater.

b. A fuel cutoff or water-feeding device may be attached directly to a boiler. ~~A fuel cutoff or water-feeding device may also be installed or~~ in the tapped openings available for attaching a water glass ~~directly~~ to a boiler, ~~provided the connections are.~~ *Connections in the tapped openings shall be made to the boiler with nonferrous tees or "Y"s not less than 1/2-inch pipe size between the boiler and the water glass so that the water glass is attached directly and as closely as possible to the boiler; the.* The run of the tee or "Y" shall take the water glass fittings, and the side outlet or branch of the tee or "Y" shall take the fuel cutoff or water-feeding device. The ends of all nipples shall be reamed to full-size diameter.

c. Fuel cutoffs and water-feeding devices embodying a separate chamber shall have a vertical straightway ~~drain pipe drainpipe~~ and a blowoff valve not less than 3/4-inch pipe size located at the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

207.3(7) 94.4(7) Stop valves for single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam boiler, there shall be one used in the return pipe connection.

207.3(8) 94.4(8) Stop valves for multiple steam heating boilers. A stop valve shall be used in each supply and return pipe connection of two or more boilers connected to a common system.

875—207.4 94.5(89) Existing installations; hot Hot water heating boilers installed before July 1, 1960. ~~All Hot water heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this chapter rule.~~

207.4(1) 94.5(1) Safety relief valves.

a. Each hot water heating boiler shall have at least one ~~officially rated~~ safety relief valve *bearing the National Board "HV" stamp* of the automatic-resetting type set to relieve at or below the maximum allowable working pressure of the boiler. The safety relief valve shall have pop action when tested by steam. When more than one safety relief valve is used on a hot water heating boiler, the additional valve or valves ~~shall be officially rated must bear the National Board "HV" stamp~~ and may be set within a range not to exceed 6 psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5 percent for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be so arranged that they cannot be reset to relieve at a higher pressure.

b. No safety relief valve shall be smaller than 3/4 inch nor larger than 4 1/2-inch standard pipe size, except those boilers having a heat input not greater than 15,000 Btu's per hour may be equipped with an officially rated safety relief valve of 1/2-inch standard pipe size. The inlet opening shall have an inside diameter equal to or greater than the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/2-inch diameter.

207.4(2) 94.5(2) ~~Pressure/altitude/temperature~~ *Temperature and pressure gage.*

a. Each hot water boiler shall have a ~~pressure/altitude/temperature~~ *temperature and pressure gage properly calibrated to the altitude* connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

b. The scale on the dial of the ~~pressure/altitude~~ *temperature and pressure* gage shall be graduated approximately to

not less than one and one-half nor more than three times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

c. The temperature gage shall be so located and connected that it shall be easily readable ~~when observing the water pressure or altitude.~~ The thermometer shall be so located that it shall at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

d. Piping or tubing for ~~pressure/altitude~~ *temperature and pressure* gage connections shall be of nonferrous metal when smaller than 1-inch pipe size.

207.4(3) 94.5(3) Temperature control.

a. ~~Each individual automatically fired hot water boiler, in~~ In addition to the operating control used for normal boiler operation, ~~each individual, automatically-fired hot water boiler~~ shall have a separate ~~high-limit-temperature-actuated high-limit, temperature-actuated~~ combustion control that will cut off the fuel supply to prevent the temperature of the water from rising over 250°F. Separate controls may have a common connection to the boiler.

b. In a multiple boiler installation where the operating temperature actuated control may be installed in a header or other point common to all boilers and can be isolated from any or all of the boilers, there shall be at least one ~~high-limit-temperature-actuated high-limit, temperature-actuated~~ combustion control mounted on each boiler.

207.4(4) 94.5(4) Low-water fuel cutoff.

a. Each automatically fired hot water heating boiler, installed after July 1, 1977, shall have an automatic low-water fuel cutoff which has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to the level established.

b. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

c. A coil-type boiler or a watertube boiler, installed after July 1, 1977, and requiring forced circulation to prevent overheating of the coils or tubes shall have a flow-sensing device installed in the outlet piping in lieu of the low-water fuel cutoff to automatically cut off the fuel supply when the circulating flow is interrupted.

207.4(5) 94.5(5) Stop valves.

a. On single hot water heating boilers, stop valves shall be located at an accessible point in the supply and return pipe connections as near the boiler nozzle as is convenient and practicable to permit draining the boiler without emptying the system.

b. ~~On multiple hot water heating boilers a stop valve shall be used in each supply and return pipe connection of two or more boilers connected to a common system. Where two or more boilers are connected in a common system, a stop valve shall be used in each boiler's supply and return pipe connection.~~

207.4(6) 94.5(6) Provisions for thermal expansion in hot water heating system.

a. All hot water heating systems incorporating hot water tanks or fluid relief columns shall be so installed as to prevent freezing under normal operating conditions.

b. Systems with open expansion ~~tank tanks~~ require an indoor overflow from the upper portion of the expansion tank in addition to an open vent. The indoor overflow is to be carried within the building to a suitable plumbing fixture or to the basement.

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c. ~~An expansion tank shall be installed that will be consistent with the volume and capacity of the system. An expansion tank adequate for the volume and capacity of the system shall be installed.~~ If the system is designed for a working pressure of 30 psi or less, the tank shall be suitably designed for a minimum hydrostatic test pressure of 75 psi. Expansion tanks for systems designed to operate above 30 psi shall be constructed in accordance with ASME Code, Section VIII, Division I, in effect when installed. Provisions shall be made for draining the tank without emptying the system, except for prepressurized tanks.

d. The expansion tank capacities for gravity hot water heating systems shall be as follows:

Sq. Ft. of Installed Equivalent Direct Radiation	Tank Capacity Gallons
Up to 350	18
Up to 450	21
Up to 650	24
Up to 900	30
Up to 1100	35
Up to 1400	40
Up to 1600	2-30
Sq. Ft. of Installed Equivalent Direct Radiation	Tank Capacity Gallons
Up to 1800	2-30
Up to 2000	2-35
Up to 2400	2-40
2400 and up	1 additional gallon per 33 square feet of additional equivalent direct radiation

e. The expansion tank capacities for forced hot water heating systems shall be based on *an* average operating water temperature of 195°F, a fill pressure of 12 psig, and *a* maximum operating pressure of 30 psig as follows:

System Volume, Gallons	Tank Capacity, Gallons
100	15
200	30
300	45
400	60
500	75
1,000	150
2,000	300

In calculating, include the volume of water in boiler, radiation and piping but not the expansion tank.

875—207.5 94.6(89) Existing hot Hot water supply boilers installed before July 1, 1960.

207.5(1) 94.6(1) Scope. This rule establishes minimum requirements for installation, operation, and inspection of hot water supply boilers *installed before July 1, 1960, which are directly fired with gas, oil, electricity, or solid fuel* when any of the following limitations are exceeded:

- Heat input of 200,000 Btu's per hour.
- Water temperature of 210°F.
- A water containing capacity of 120 gallons.

207.5(2) 94.6(2) Safety relief valves. Each hot water supply boiler must have at least one ~~officially rated~~ pressure and temperature relief valve *bearing the National Board "HV" stamp* installed on the hot water outlet line ~~of the boiler and conform to the requirements of rules 875—208.3(89) and 875—208.4(89).~~

207.5(3) 94.6(3) Safety valves and safety relief valves for tanks and heat exchangers.

a. When a hot water supply vessel is heated indirectly by steam in a coil or pipe, the pressure of the steam used shall not exceed the safe working pressure of the tank. A safety relief valve *at least 1 inch in diameter shall be installed applied on the tank at least 1 inch in diameter and shall be set to relieve at or below the maximum allowable working pressure of the tank.*

b. When water over 160° F is circulated through the coils or tubes of a heat exchanger to warm *the* water for space heating or hot water supply, the heat exchanger shall be equipped with one or more ~~officially rated~~ safety relief valves *bearing the National Board "HV stamp", set to relieve at or below the maximum allowable working pressure of the heat exchanger, and of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 10 percent above the maximum allowable working pressure of the vessel. The valves shall be set to relieve at or below the maximum allowable working pressure of the heat exchanger.*

c. When water over 160° F is circulated through the coils or tubes of a heat exchanger to generate low-pressure steam, the heat exchanger shall be equipped with one or more ~~officially rated~~ safety valves *bearing the National Board "HV stamp" set to relieve at a pressure not to exceed 15 psig and of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 5 psig above the maximum allowable working pressure of the vessel. The valves shall be set to relieve at a pressure not to exceed 15 psig.*

207.5(4) 94.6(4) Gages. Pressure/altitude/temperature Temperature and pressure gages shall be installed in accordance with 207.4(2) 94.5(2).

207.5(5) 94.6(5) Temperature controls. Temperature controls shall be installed in accordance with 207.4(3) 94.5(3).

207.5(6) 94.6(6) Stop valves.

a. Stop valves shall be placed in the supply and return pipe connections of a single hot water supply boiler installation to permit draining the boiler without emptying the system.

b. ~~For multiple boiler installations, a stop valve shall be used in each supply and return pipe connection of two or more boilers connected to a common system. Where two or more boilers are connected in a common system, a stop valve shall be used in each boiler's supply and return pipe connection.~~

207.5(7) 94.6(7) Thermal expansion. If a system is equipped with a check valve or pressure-reducing valve in the cold-water inlet line, an airtight expansion tank or other suitable air cushion shall be installed. When an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1, in effect when installed, for a maximum allowable working pressure equal to or greater than the water heater. Except for prepressurized tanks, provisions shall be made for draining the tank without emptying the system.

875—207.6(89) General requirements for all heating boilers and hot water supply boilers.

207.6(1) Instruments fittings and controls mounted inside boiler jackets. ~~Any or all instruments, fittings and controls required by this chapter may be installed inside of boiler jackets provided the water gage and pressure gage on a steam boiler or the thermometer and pressure gage on a water boiler are visible through an opening or openings at all times.~~

207.6(2) Electrical code compliance.

a. Wiring. All wiring for controls, heat generating apparatus and other appurtenances necessary for the operation of the boiler or boilers shall be in accordance with the National Electric Code (1992). ~~All boilers supplied with factory~~

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mounted and wired controls, heat generating apparatus and other appurtenances necessary for the operation of the boilers shall be installed in accordance with the provisions of nationally recognized standards.

b.—Circuitry. The control circuitry shall be grounded and shall operate at 150 volts or less. One of the two following systems may be employed to provide the control circuit:

(1) Two wire nominal 120 volt system with separate equipment ground conductor as follows:

This system shall consist of the line, neutral and equipment ground conductors. The control panel frame and associated control circuitry metallic enclosures shall be electrically continuous and be bonded to the equipment ground conductor.

The equipment ground conductor and the neutral conductor shall be bonded together at their origin in the electrical system as required by the National Electric Code (1992).

The line side of the control circuit shall be provided with a time delay fuse sized as small as practicable.

(2) Two wire nominal 120 volt system obtained by using an isolation transformer as follows:

The two wire control circuit shall be obtained from the secondary side of an isolation transformer, shall be electrically continuous and shall be bonded to a convenient cold water pipe. All metallic enclosures of control components shall be securely bonded to this ground control circuit wire. The primary side of the isolation transformer will normally be a two wire source with a potential 230, 208 or 440 volts.

Both sides of the two wire primary circuit shall be fused. The hot leg on the load side of the isolation transformer shall be fused as small as practicable, and shall not be fused above the rating of the isolation transformer.

c.—Shutdown switches and circuit breakers. It is recommended that a manually operated remote heating plant shutdown switch or circuit breaker be located just outside the boiler room door and marked for easy identification. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

207.6(3) Safety and safety relief valve discharge piping. When a discharge pipe is used its internal cross-sectional areas shall not be less than the full area of the valve outlet or of the total of the valve outlets discharging therein and shall be as short and straight as possible and so arranged as to avoid undue stress on the valve or valves. When an elbow is placed on a safety valve or safety relief valve discharge pipe it shall be located close to the valve outlet.

207.6(4) Expansion and contractions. Provisions shall be made for the expansion and contraction of steam and hot water mains connected to boilers by providing substantial anchorage. Swing points shall be provided when boilers are installed in batteries so undue strain will not be transmitted to the boilers.

207.6(5) Return pipe connections. The return pipe connections of each boiler supplying a gravity return steam heating system shall be so arranged as to form a loop so that the water in each boiler cannot be forced out below the safe water level.

207.6(6) Feedwater connections.

a.—Feedwater, makeup water or water treatment shall be introduced into a boiler through the return piping system. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent feedwater connection shall not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment shall not

be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, blowoff, water column, water gage glass, pressure gage or temperature gage.

b.—The makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the return pipe system.

207.6(7) Oil heaters.

a.—A heater for oil or other liquid harmful to boiler operation shall not be installed directly in the steam or water space within a boiler.

b.—Where an external type heater for such service is used, means shall be provided to prevent the introduction into the boiler of oil or other liquid harmful to boiler operation.

207.6(8) Bottom blowoff or drain valve.

a.—Each boiler shall have a bottom blowoff or drain pipe connection fitted with a valve or cock connected with the lowest water space practicable, with the minimum size of blowoff piping and valves as specified below:

Minimum Required Safety or Safety-Relief Valve Capacity Pounds of Steam Per Hour	Blowoff Valves Size (Inches)
Up to 500	¾
501 to 1250	1
1251 to 2500	1¼
2501 to 6000	1½
6001 and larger	2

NOTE: To determine the discharge capacity of the safety relief valve in terms of Btu, the relieving capacity in pounds of steam per hour is multiplied by 1,000.

Blowoff valve means all blowoff valves, drain valves, and pipe connections.

b.—Any discharge piping connected to bottom blowoff or bottom drain connections shall be full size to the point of discharge.

These rules are intended to implement Iowa Code chapter 89.

ITEM 9. Renumber **875—Chapter 208** as **875—Chapter 95**.

ITEM 10. Amend renumbered subrule 95.3(5) as follows:

95.3(5) When operating conditions are changed or additional heater heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with subrule 208.5(1) 95.5(1). Additional valves required may be installed on the outlet piping provided there is no intervening valve.

ITEM 11. Amend **875—Chapter 209** as follows:

CHAPTER 209 96 PRESSURE VESSELS

875—209.1 96.1(89) New installations Codes adopted by reference. This rule applies to pressure vessels, except those exempted by Iowa Code section 89.4(2).

209.1(1) 96.1(1) Installations—from July 1, 1983, to December 31, 1988. Pressure vessels installed *Installations from July 1, 1983, to December 31, 1988*, shall be designed, manufactured, installed, inspected, and stamped in conformity with the applicable sections of the ASME Boiler and Pressure Vessel Code (1983) and the National Board registration requirements.

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209.1(2) 96.1(2) Installations—from January 1, 1989, to December 31, 1990. Pressure vessels installed *Installations from January 1, 1989, to December 31, 1990*, shall be designed, manufactured, installed, inspected, and stamped in conformity with the applicable sections of the ASME Boiler and Pressure Vessel Code (1986) with 1988 addenda) and the National Board registration requirements.

209.1(3) 96.1(3) Installations—from January 1, 1991, to June 30, 1996. Pressure vessels installed *Installations from January 1, 1991, to June 30, 1996*, shall be designed, manufactured, installed, inspected, and stamped in conformity with the applicable sections of the ASME Boiler and Pressure Vessel Code (1989) with 1990 addenda) and the National Board registration requirements.

209.1(4) 96.1(4) Installations—from July 1, 1996, to December 31, 1997. Pressure vessels, including reinstalled pressure vessels, installed between *Installations and reinstalled pressure vessels, installed between Installations and reinstalled pressure vessels from July 1, 1996, and to December 31, 1997*, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section VIII (1995) or the requirements of recognized national or international standards such as DIN, BSI, ASME, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Pressure vessels installed and reinstalled after July 1, 1996, must be inspected by a National Board commissioned inspector and be registered with the National Board.

209.1(5) 96.1(5) Installations—from January 1, 1998, to December 31, 2000. Pressure vessels installed, including reinstalled pressure vessels, *Installations and reinstalled pressure vessels from January 1, 1998, to December 31, 2000*, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section VIII (1995) or the requirements of recognized national or international standards such as DIN, BSI, ASME, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Pressure vessels installed and reinstalled after January 1, 1998, must be inspected by a National Board commissioned inspector and be registered with the National Board.

209.1(6) 96.1(6) Installations on or after from January 1, 2001, to August 9, 2006. On or after January 1, 2001, pressure vessels installed, including reinstalled pressure vessels, *Installations and reinstalled pressure vessels from January 1, 2001, to August 9, 2006*, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section VIII (1998 with 1999 and 2000 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, ASME, JIS, or CNS. Only national and international standards acceptable to the division may be utilized. Pressure vessels installed and reinstalled on or after January 1, 2001, must be inspected by a National Board commissioned inspector and be registered with the National Board.

96.1(7) *Installations after August 9, 2006. Installations and reinstalled after August 9, 2006, shall be designed, manufactured, installed, inspected, and stamped in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels Section VIII (2004 with 2005 addenda) or with the requirements of recognized national or international standards such as DIN, BSI, ASME, JIS, or CNS. Only national and international standards acceptable to the division may be utilized.*

875—209.2 96.2(89) Existing installations Objects installed prior to July 1, 1983.

209.2(1) 96.2(1) Maximum allowable working pressure (code stamped).

a. The maximum allowable working pressure for code-stamped pressure vessels shall be determined in accordance with the applicable provisions of the ASME Code or American Petroleum Institute API-ASME Code under which they were constructed and stamped.

209.2(2) Maximum allowable working pressure (noncode stamped).

a b. The maximum allowable working pressure on the shell of pressure vessels not covered by subrule 209.2(1) without a code stamp shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the course and the factor of safety set by this subrule following equation.

$$\frac{TS \cdot t}{RFS} = \text{Maximum allowable working pressure, psig.}$$

Where:

- TS = Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.
- t = Minimum thickness of shell plates of the weakest course, in inches.
- E = Efficiency of longitudinal joint. For riveted joints, use ASME Code, Section 1 (1971). For fusion-welded and brazed joints, use the following table:
- | | |
|--------------------|----|
| Single lap welded | 40 |
| Double lap welded | 60 |
| Single butt welded | 60 |
| Double butt welded | 75 |
| Forge welded | 70 |
| Brazed steel | 80 |
- R = Inside radius of the weakest course of shell or drum in inches, provided the thickness does not exceed 10 percent of the radius. If the thickness is over 10 percent of the radius, the outer radius shall be used.
- FS = Factor of safety shall be four.

b c. External pressure. The maximum allowable working pressure for noncode pressure vessels subjected to external or collapsing pressure shall be determined by the ASME Code, Section VIII, Divisions 1, 2 and 3 (1998 with 1999 and 2000 addenda).

209.2(3) 96.2(2) Factor of safety. The inspector shall increase the factor of safety shall be increased by the inspector if the conditions and safety of the pressure vessel demand it.

209.2(4) 96.2(3) End closures. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the formulas in ASME Code, Section VIII, Divisions 1, 2 and 3 (1998 with 1999 and 2000 addenda).

209.2(5) Inspection of inaccessible parts. Where in the opinion of this inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

209.2(6) 96.2(4) Safety appliances. Each pressure vessel shall be protected by such safety and relief valves and indicating and controlling devices as will ensure its safe operation. Valves shall not readily be rendered inoperative. The relieving capacity of safety valves shall be such as to prevent

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a rise of pressure in the vessel of more than 10 percent above maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be carried to a safe place.

~~209.2(7) Repairs and renewals. Whenever replacement or repairs are made to fittings and appliances the work must comply with the requirements for new installations.~~

These rules are intended to implement Iowa Code chapter 89.

ITEM 12. Rescind the title "Boilers and Pressure Vessels Division" preceding **875—Chapter 200**.

ARC 5085B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 89.7 and 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 94, "Operations of Advisory Board," Chapter 95, "Grant Applications and Awards," Chapter 96, "Professional Wrestling," Chapter 97, "Professional Boxing," Chapter 98, "Elimination Tournaments," Chapter 99, "Amateur Boxing," Chapter 100, "Professional Kickboxing," Chapter 101, "Professional Shoot Fighting," and Chapter 202, "Special Inspectors," Iowa Administrative Code.

The proposed amendments update and renumber the rules.

The purposes of these amendments are to protect the safety of the public; implement legislative intent; provide for orderly renewal and revocation of special inspector commissions; make the rules easier to read; and keep the rules current.

If requested by May 30, 2006, a public hearing will be held on May 31, 2006, at 1 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than May 31, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments are intended to implement Iowa Code chapters 89, 90A, 252J and 261.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Move the title "Wrestling and Boxing" from between **875—Chapters 93** and **94** to between **875—Chapters 169** and **170**.

ITEM 2. Renumber **875—Chapters 94** to **101** as **875—Chapters 170** to **177**.

ITEM 3. Amend renumbered subrule 171.6(4) as follows:

171.6(4) Access to records. The records required by this rule shall be accessible to the commissioner, the auditor of state, or their designees for the ~~time required in subrule 95.6(3)~~ *retention period established in this rule*.

ITEM 4. Amend renumbered rule 875—174.1(90A) as follows:

875—174.1(90A) Purpose and scope. These rules apply to elimination tournaments, which are boxing matches where contestants box one another, two at a time, with one contestant eliminated from the tournament. The elimination continues with winners from the various bouts competing until only one contestant remains undefeated in the weight division. Elimination tournaments are governed by the rules in 875—Chapter 97 173 and this chapter. Any conflicts between 875—Chapter 97 173 and this chapter shall be resolved in favor of this chapter.

ITEM 5. Amend renumbered subrule 174.3(1) as follows:

174.3(1) Hand protection. Practice wraps (training handwraps) may be used in lieu of compliance with rule 875—97.9(90A) 875—173.9(90A). Gloves weighing 16 ounces shall be worn by both contestants if either contestant weighs 147 pounds or more. If both contestants weigh less than 147 pounds, both contestants shall wear gloves weighing at least 10 ounces.

ITEM 6. Amend renumbered rule 875—174.5(90A) as follows:

875—174.5(90A) Down. In determining a technical knockout (TKO) under rule ~~875—97.46(90A)~~ 875—173.46(90A), a down shall include a standing eight count where a contestant is still standing but is in a semiconscious state and cannot, in the opinion of the referee, continue the bout.

ITEM 7. Amend renumbered rule 875—174.9(90A) as follows:

875—174.9(90A) Public safety. The provisions of rule 875—97.22(90A) 875—173.22(90A) are applicable to the elimination tournaments except at least two law enforcement officers shall be provided by the promoter.

ITEM 8. Amend renumbered rule 875—174.10(90A) as follows:

875—174.10(90A) Impartiality of timekeeper. The use of lights on each ring post to indicate the final seconds of a round shall not be considered as signals to interested parties under rule 875—97.47(90A) 875—173.47(90A). Corner lights may be used only if consistently activated throughout the elimination tournament and all contestants and officials are informed prior to the start of the tournament about the information conveyed by the round lights.

ITEM 9. Amend renumbered rule 875—176.3(90A) as follows:

875—176.3(90A) Professional boxing rules adopted by reference. The following rules from 875—Chapter 97 173,

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Professional Boxing, are adopted by reference as kickboxing rules:

1. 875—97.3 173.3(90A) (Age restrictions);
2. 875—97.6 173.6(90A) (Number of bouts);
3. 875—97.7 173.7(90A) (Contestant's arrival);
4. 875—97.18 173.18(90A) (Attendance of commissioner);
5. 875—97.22 173.22(90A) (Public safety);
6. 875—97.25 173.25(90A) (Locker rooms); and
7. 875—97.26 173.26(90A) (Contracts).

ITEM 10. Amend 875—Chapter 202 as follows:

CHAPTER 202
SPECIAL INSPECTORS

875—202.1 90.9(89,252J,261) Commission Special inspector commissions.

90.9(1) Application. A special inspector shall obtain a commission from the labor commissioner. A commission shall be granted only to those persons holding a commission from the National Board. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Special Inspector Commission Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. The special inspector shall notify the division at the time any of the information on the form or attachments changes. Additionally, the applicant shall submit a copy of the applicant's National Board Inspectors Commission with an initial application and a copy of the applicant's current National Board work card with each application.

90.9(2) Expiration. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

90.9(3) Changes. The special inspector shall notify the division at the time any of the information on the form or attachments changes.

875—202.2(89) Denials. 90.9(4) Denials. The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in rules 202.4(89) subrules 90.9(6) to 202.6(89) 90.9(8).

875—202.3(89) Investigations. 90.9(5) Investigations. Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

875—202.4(89) Reasons for probation. 90.9(6) Reasons for probation. The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

875—202.5(89,252J) Reasons for suspension. 90.9(7) Reasons for suspension. The labor commissioner may issue a

notice of commission suspension when an investigation reasonably reveals the following:

4 a. The special inspector failed to submit and report inspections on a timely basis;

2 b. The special inspector abused the special inspector's authority;

3 c. The special inspector misrepresented self as a state inspector or a state employee;

4 d. The special inspector used commission authority for inappropriate personal gain;

5 e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

6 f. The special inspector committed numerous violations as described in rule 202.4(89) subrule 90.9(6);

7 g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

8 h. The National Board revoked or suspended the special inspector's work card;

9 i. The division received a certificate of noncompliance; or

10 j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs "4 a" to "8 h" of this rule subrule.

875—202.6(89,252J) Reasons for revocation. 90.9(8) Reasons for revocation. The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

4 a. The special inspector filed a misleading, false or fraudulent report;

2 b. The special inspector failed to perform a required inspection;

3 c. The special inspector failed to file a report or filed a report that was not in accordance with the provisions of applicable standards;

4 d. The special inspector failed to notify the division in writing of any accident involving an object;

5 e. The special inspector committed repeated violations as described in rule 202.5(89,252J) subrule 90.9(7);

6 f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

7 g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs "1" to "6" "a" to "f" of this rule subrule;

8 h. The National Board revoked or suspended the special inspector's work card; or

9 i. The division received a certificate of noncompliance.

90.9(9) Procedures. The following procedures shall apply, except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J or 261 shall apply.

875—202.7(89) Notice of actions. a. Notice of actions. The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

875—202.8(89) Contested cases. b. Contested cases. The special inspector shall have 20 days to file a written notice of

LABOR SERVICES DIVISION[875](cont'd)

contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

875—202.9(89) Hearing procedures. *c. Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

875—202.10(89) Emergency suspension. *d. Emergency suspension.* Pursuant to Iowa Code section 17A.18(3) 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or ~~regulations~~ *rules*, the special inspector's commission may be summarily suspended.

875—202.11(89) Probation period. *e. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

875—202.12(89) Suspension period. *f. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

875—202.13(89) Revocation period. *g. Revocation period.* A special inspector's commission ~~which~~ *that* has been revoked shall not be reinstated for five years.

875—202.14(89,252J) Certificates of noncompliance. Rules 202.8(89) through 202.13(89) shall not apply in the event of revocation or suspension due to receipt of a certificate of noncompliance, and the procedures of Iowa Code section 252J.8 shall apply.

875—202.15(89) Concurrent actions. *h. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

These rules are intended to implement Iowa Code chapters 17A, 89, and 252J.

ARC 5090B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

This amendment to Chapter 64 corrects an error in the effective dates of the storm water General Permit No. 2, which authorizes the discharge of storm water from construction sites. In 2002, rule making was implemented which renewed storm water General Permits Nos. 1, 2 and 3 for the five-year period beginning October 1, 2002, to October 1, 2007. However, these dates were not incorporated into the Iowa Administrative Code for General Permit No. 2, which still retains the previous effective dates of October 1, 1997, to October 1, 2002, making the current General Permit No. 2 invalid. Those entities permitted under General Permit No. 2 are currently without storm water permit coverage required by the Iowa Administrative Code and the Code of Federal Regulations.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary because the amendment simply changes the effective dates as originally intended by the Commission in 2002, and finds that that entities currently required to be covered by a valid storm water permit should be given coverage as expeditiously as possible.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing, as it confers a benefit on those entities that are required to be covered by a valid storm water permit.

This amendment is intended to implement Iowa Code chapter 455B, division I.

This amendment became effective April 21, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule 64.15(2), introductory paragraph, as follows:

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 1997 2002, to October 1, 2002 2007.

[Filed Emergency 4/21/06, effective 4/21/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5078B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6 and 2002 Iowa Acts, chapter 1125, the Department of Human Services amends Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments allow the Department to grant deemed certification status to a provider of rehabilitative treatment services under certain conditions. Under these amendments, providers that earn accreditation from a recognized national accrediting body for a program or service that is substantially similar to the service as defined for the rehabilitative treatment program may substitute that accreditation for certification review by the Department of Human Services. The amendments specify the Joint Commission on Accreditation of Healthcare Organizations for Behavioral Health or the Council on Accreditation of Services for Children and Families as the recognized accrediting bodies.

Section 1(2a) of 2002 Iowa Acts, chapter 1125, directed the Department to permit deemed status for providers accredited by these bodies, conditional upon approval of a Medicaid state plan amendment by the federal Centers for Medicare and Medicaid Services, which has been granted. The state plan approval was necessary because services for children with rehabilitative treatment needs that are provided in the foster care, group care, family-centered services, and family preservation programs are supported with federal funds through the Medicaid Early and Periodic Screening, Diagnosis, and Treatment Program, known in Iowa as "Care for Kids."

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 1, 2006, as **ARC 4936B**. The Department received two comments on the Notice of Intended Action. In response to these comments, the Department has changed the language in subparagraph 185.11(1)"e"(1) to remove the three-year limit on deemed certification. The deemed certification will have the same duration as the agency's accreditation. The Department has also amended subparagraphs 185.11(1)"d"(1) and 185.11(1)"g"(1) to reflect the change in title of Form 470-4295 to "RTSS Deemed Status Application."

These amendments do not provide for waivers in specified situations because participation through deemed status is optional and because the amendments remove certification requirements for the affected providers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 12, 2006.

The Department finds that these amendments confer a benefit on facilities by allowing accreditation reviews to substitute for certification reviews. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 234.6.

These amendments became effective on May 1, 2006.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule **441—185.1(234)** by adopting the following **new** definition in alphabetical order:

“Deemed status” means an acceptance of an outside body’s review, assessment, and accreditation of a rehabilitative treatment services provider’s functioning and services in lieu of certification based on review and evaluation by the department.

ITEM 2. Amend rule 441—185.11(234) by adopting the following **new** subrule:

185.11(1) Deemed status. The department may grant deemed status to a provider accredited by a recognized national, not-for-profit, accrediting body when the department determines the accreditation is for services similar to those which the department certifies. Deemed status shall not be granted for services defined in rule 441—78.52(249A) as children’s mental health waiver services.

a. Accrediting body. The accrediting body doing the review must assess categories of organizations and types of programs and services that correspond to the programs and services described in this chapter. The national accrediting bodies currently recognized as meeting department criteria for possible deemed status are:

(1) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Behavioral Health.

(2) The Council on Accreditation of Services for Children and Families (COA).

b. Accreditation credentials. To be acceptable for deemed status, the accreditation credentials of the national body must:

(1) Specify the type of organization, programs, and services that the national body accredits.

(2) Include targeted population groups, if appropriate.

c. Requirements for deemed status. To be eligible for deemed status, a provider shall:

(1) Possess accreditation credentials in conformity with 185.11(1)“b” from a national accrediting body recognized in 185.11(1)“a” for a service or program defined in this chapter.

(2) Require staff for the program whose status is being deemed to have the training and credentials needed to meet the needs of the individual served.

d. Application for deemed status.

(1) To apply for deemed status, the provider shall submit:

1. Form 470-4295, RTSS Deemed Status Application; and

2. Copies of the provider’s latest survey report and accreditation certificate.

(2) The provider shall make available to the department upon request accreditation reports and rehabilitative treatment services records of individual children receiving services.

(3) The department shall not accept an application for deemed status once the department has begun an on-site visit. The provider shall complete the certification process.

(4) Department staff shall conduct one or more on-site visits when a provider that the department has not previously certified applies for deemed status.

e. Granting of deemed status.

(1) Duration. When the department grants deemed status, the certification period shall coincide with the period awarded by the national accrediting body.

(2) Scope. Deemed status shall apply only to the services accredited by the national accrediting body. The department shall conduct its customary certification review of those services provided under this chapter that are not assessed by the national accrediting body.

(3) Technical assistance. Department staff shall provide technical assistance to providers with deemed status as time permits.

f. Reservations. When deemed status is granted, the department reserves the right to have department staff:

(1) Do joint site visits with the accrediting body;

(2) Attend accreditation exit conferences; or

(3) Conduct focused follow-behind visits as determined to be appropriate in consultation with the national accrediting body and the provider.

g. Continuation of deemed status.

(1) A provider with deemed status shall send a copy of Form 470-4295, RTSS Deemed Status Application, along with a copy of the application for renewal to the national accrediting body at the same time as the provider applies to the national accrediting body.

(2) If the national accrediting body renews the provider’s accreditation before the date the previous accreditation was due to expire, the provider shall submit a copy of the accreditation certificate to the department. The provider shall make available to the department upon request copies of the accreditation report and rehabilitative treatment services records of individual children receiving services.

(3) If the national accrediting body has not issued a final decision on the provider’s accreditation before the date the provider’s previous accreditation is due to expire, the provider shall send the department a copy of the cover sheet and the national accrediting body’s report on rehabilitative treatment services. The provider shall submit the cover sheet and report within 30 calendar days from the date that the provider receives the documents or within 30 days from the expiration date of the provider’s accreditation, whichever comes later. If a corrective action plan is required for rehabilitative treatment services, the provider shall send the department a copy of all correspondence and documentation related to the corrective action plan.

h. Notice of change in status. The provider shall immediately notify the department in writing when:

(1) There has been a change in the provider’s accreditation status;

(2) The provider’s accreditation has been placed under suspension; or

(3) The national accrediting body has revoked the provider’s accreditation.

i. Review of deemed status. The department shall review and act upon deemed status when:

(1) The provider’s national accreditation status expires without renewal;

(2) The national accrediting body downgrades accreditation status or withdraws the provider’s accreditation; or

(3) The provider’s corrective plan is not acceptable to the national accrediting body.

[Filed Emergency After Notice 4/17/06, effective 5/1/06]

[Published 5/10/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5103B**SECRETARY OF STATE[721]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 52.5, the Secretary of State hereby amends Chapter 22, "Voting Systems," Iowa Administrative Code.

The amendments provide additional security procedures to protect the integrity of the election process for counties using voting systems with memory cards. Additional amendments provide for the preparation, testing and use procedures for Election Systems & Software's AutoMARK Voter Assist Terminal (VAT), version 1.0. AutoMARK VAT is an electronic vote-marking device certified for use only with Election Systems & Software Unity 2.5 voting system, including the M100 precinct count optical scanner and the Model 650 central count optical scanner.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 2006, as **ARC 4974B**.

The agency received many public comments on the proposed amendments. Many of the comments have been followed in making changes to the Noticed amendments. The changes that have been made are procedural ones, guided by the information provided by county auditors, their election staff members, and representatives of voting equipment vendors. A distinction has been made in procedures to account for the fact that some counties purchase programming services from a vendor, while others have the resources to program their own memory cards. Specific log forms have been added to the rules to help election officials comply with the requirements of the rules. Some terms have been changed for added clarity. For example, the "election log" in subrule 22.51(4) has been renamed the "memory card log." Several people requested clear guidance about the retention of the programmed memory cards. That guidance has been added in subrules 22.51(13) and 22.51(14). Adopted rule 721—22.51(52) also requires that the audit logs from memory cards be printed before the cards are erased.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), these amendments became effective upon publication in the Administrative Bulletin on May 10, 2006. The Secretary of State finds that these amendments confer a benefit upon county election officials and voters by providing clear and thorough security procedures for the use of voting equipment containing memory cards and for the AutoMARK accessible ballot marking device. The May 10, 2006, effective date puts these amendments into effect in time for county commissioners of elections to comply with the amendments for the June 6, 2006, primary election.

These amendments are intended to implement Iowa Code chapter 52.

The amendments became effective on May 10, 2006.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule:

721—22.51(52) Memory cards. A memory card is a small, removable device containing data files of the election defini-

tion programmed for use in voting equipment for each election. For all voting equipment, the following security measures are required:

22.51(1) Serial number. Each memory card shall have a serial number printed on a readily visible permanent label. The label shall include the name of the county.

22.51(2) Inventory. Memory cards owned by the county and retained in the custody of the county commissioner shall be maintained under perpetual inventory, with a record of inventory activity. The commissioner shall maintain a similar record of relevant actions if the memory cards are acquired from a vendor for each election. The record of inventory activity shall reflect:

- a. The date each memory card was acquired;
- b. Each use of each memory card in an election;
- c. Each maintenance activity to a memory card, such as changing the battery;
- d. Any problems or errors detected while using the memory card during its life;
- e. Records of the disposal of any memory cards at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

22.51(3) Custody.

a. In counties where the commissioner has the necessary software and equipment to program the memory cards locally, the commissioner shall maintain a memory card log for each election as required in subrule 22.51(4) during the period when the memory cards are removed from storage, prepared for an election, and until they are sealed into a voting device. Only county employees and precinct election officials, as applicable, authorized by the county's security policy shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time. If a person who is not authorized by the security policy to have access to the memory cards transports them to another location, such as a warehouse, the memory cards shall be enclosed in a transport container with a tamper-evident seal.

b. In counties where the commissioner purchases programming services from a vendor, the memory cards shall be shipped to and from the vendor by a shipping service that employs tracking numbers. The memory cards shall be enclosed in a package sealed with a numbered, tamper-evident seal. Programmed memory cards shall be shipped in a package sealed with a numbered, tamper-evident seal from the vendor to the commissioner. If the seal is not intact upon arrival, the commissioner shall immediately contact the vendor for replacement cards. Only county employees authorized by the county's security policy (and precinct election officials, as applicable) shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time.

22.51(4) Memory card log. For each election, the commissioner shall create a log to record the serial numbers of each memory card, the voting device into which the memory card was installed, the serial number of the seal, the ballot style and the precinct to which the machine is assigned. The log shall be in substantially the same form as Form A or Form B, as applicable.

[illegible]

SECRETARY OF STATE[721](cont'd)

Memory Card Shipping Record for _____ County

Shipped for programming:

Record each card number before packing to ship, and check out each card number on the chain of custody record. Enclose a photocopy of the Memory Card Record with the cards.

Shipped by: _____ Date: ____/____/____ Time: ____:____ a.m./p.m.
Print name Signature

Shipped to: _____ Shipped via: _____

Tracking number: _____

Instructions to vendor:

Check in each card number on the enclosed chain of custody record when unpacking cards.

By: _____ Date: ____/____/____ Time: ____:____ a.m./p.m.
Print name Signature

- If memory cards are removed from this inventory for any reason, make a notation of which card(s) on the Memory Card Record.
- Replacement card(s) if issued should be added to the bottom of the Memory Card Record as a new card. A serial number will be assigned later by the receiving county.

Shipped via: _____ Date: _____ Tracking number: _____

Received by County Election Department on Date: ____/____/____

Was the package sealed? _____ Was the seal intact? _____ Notes: _____

Keep the memory cards in secure storage after they are received and until they are installed in the voting equipment.

22.51(5) Preparation and installation. When memory cards are installed, they shall be sealed immediately into the machine using a numbered, tamper-evident seal. Appropriate log entries shall be completed.

22.51(6) Replacing seals or memory cards. If a seal is accidentally broken or a memory card is replaced for any reason, the issuance of a new seal and the entry into the log shall be witnessed by more than one person. The facts of the incident and the names of the individuals who detected and resolved it shall be recorded.

22.51(7) Opening the polls. Immediately before the polls open on election day, the precinct election officials shall turn on the voting equipment and print the report showing that all counters are set at zero.

22.51(8) Verification log. The commissioner shall provide to each precinct a precinct verification log with the ballot record and receipt. The verification log shall provide places for precinct election officials to record or check the following information before the polls open and again before leaving the polling place at the end of the day:

- Seal numbers from the voting equipment;

- Keys provided for the voting equipment; and
- Condition of seals on ballot containers.

22.51(9) Election day.

a. Before the polls are opened, the precinct election officials shall verify the required information in the verification log and sign the log.

b. After the polls are closed, the precinct election officials shall verify the required information in the verification log and sign the log before leaving the polling place.

c. If the precinct election officials remove the memory cards from the voting equipment, the officials shall first print the results report from the voting equipment.

22.51(10) Return of memory cards. If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

SECRETARY OF STATE[721](cont'd)

Memory Cards

Election Date: _____
Precinct: _____

This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

Signatures of all precinct election officials:

1. _____
2. _____
3. _____
4. _____
5. _____

22.51(11) Storage. If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). The memory card audit log shall be printed before the memory cards are removed. When the memory cards are removed, their serial numbers shall also be verified against the verification log. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

22.51(12) Results verified. Before the conclusion of the canvass of votes, the individual results reports from the precincts, as signed by the precinct election officials at the polls on election night, shall be compared to the accumulated election results compiled for the canvass (either manually or electronically) to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before supervisors conclude the canvass.

22.51(13) Retention of programmed memory cards. The election information on all memory cards used for an election shall be retained on the memory cards until after the time to file requests for recounts and election contests has passed. If a contest is pending, the memory cards shall be retained until the contest is resolved. Before the memory cards are permanently erased, the commissioner shall print the memory card audit log from each card.

22.51(14) Retention of program information. The commissioner shall retain all instructions and other written records of the process for programming the memory cards and the memory card audit logs for the time period required by Iowa Code section 50.19. The contents of memory cards and other electronic records of the election process shall be collected and retained in an electronic or other medium and stored with the other election records for the period required by Iowa Code section 50.19.

ITEM 2. Adopt the following **new** subrule:

22.261(20) AutoMARK Voter Assist Terminal (VAT). AutoMARK VAT is an electronic vote-marking device certified for use only with the Election Systems & Software Unity 2.5 voting system, including the M100 precinct count optical scanner and the Model 650 central count optical scanner. It shall not be used with any other version of an Election Systems & Software voting system or with any another voting system.

a. Acceptance testing. Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to a thorough acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

b. Audio ballot preparation. Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

c. Pre-election testing. Each AutoMARK VAT shall be tested thoroughly before each election in which it will be used.

(1) Before use of the AutoMARK VAT at any election, the commissioner shall follow the pre-election inspection procedure prescribed in the AutoMARK System Installation and Maintenance Guide, AutoMARK Voter Assist Terminal A100 SQS-5010, revision 18, May 3, 2005, pages 24 through 28; and the testing procedures prescribed in AutoMARK Jurisdiction Guide SQS-5061-003-R, revision 20, April 26, 2005, pages 22 through 24. Although the testing procedures in the Jurisdiction Guide also appear in the AutoMARK Pollworker's Guide, precinct election officials shall not be instructed to perform these tests. All testing shall be completed before election day.

(2) The public test for the VAT shall verify that the correct visual and audio ballots are installed on each VAT. Each voting position on the AutoMARK VAT shall be selected and deselected to demonstrate that it is functional. For each office on the ballot, the first position (or last or other standard choice) shall be left selected to demonstrate the function of the ballot-marking device. Ballots printed during the public test shall be tabulated using the M100 or Model 650 ballot scanner.

d. Compact flash memory cartridge or memory card. The compact flash memory cartridge is programmed for each election and holds the offices, candidates and other information necessary to provide the correct ballot for each voter who will be using the AutoMARK VAT. The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by 721—22.51(52). Between delivery to the polling place and the time the precinct officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged. The commissioner shall not provide the election officials with keys to the memory cartridge access door.

e. Print cartridge. For primary and general elections, the commissioner shall install a new print cartridge in each AutoMARK VAT. For all other elections, the commissioner shall determine whether a previously used cartridge has been in storage longer than the manufacturer's recommendation and that the cartridge contains enough ink to last all day. The commissioner shall consider the number of votes that may be cast on each ballot, the number of registered voters in each precinct where the AutoMARK VAT will be used, and the anticipated voter turnout for that precinct. The compartment containing the print cartridge shall be sealed following installation of the print cartridge. The precinct election officials shall be provided with the seal number and shall verify on election morning that the seal is present and undamaged.

SECRETARY OF STATE[721](cont'd)

f. Calibration testing. The commissioner shall provide for printer and screen calibration to be tested after delivery of the AutoMARK VAT to the polling place. The delivery staff shall complete the test before the polls open on election day. The delivery staff shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, date and time of the test, the name of the person performing the test and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester. It shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

g. AutoMARK VAT keys. The mode switch key is used to turn on the AutoMARK VAT and to enable the device for voting. Each key for the AutoMARK VAT shall be labeled. Possession of the keys shall be restricted to precinct election officials and authorized members of the commissioner's staff. Possession of the keys shall be monitored. The precinct election official shall sign a receipt when the official receives the key. The commissioner shall sign a receipt when the official returns the key. The receipts shall be kept with the

official records of the election. The commissioner shall maintain a log of the keys in the possession of the commissioner's staff members.

h. Table. The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely without wobbling. Knee clearance shall be at least 27 in (685 mm) high, 30 in (760 mm) wide, and 26 in (660 mm) deep. The top of the table shall be from 28 in to 34 in (710 mm to 865 mm) above the floor.

i. Privacy shield. The commissioner shall provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs), as well as privacy.

[Filed Emergency After Notice 4/21/06, effective 5/10/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5104B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4879B** on February 15, 2006. The IDED Board adopted the amendments on April 20, 2006.

The amendments include: establishing the set-aside for the economic development set-aside at 20 percent of the annual allocation from the U.S. Department of Housing and Urban Development; clarifying the method of distribution of funds; and requiring that applicants submit a facilities plan to the Iowa Department of Natural Resources.

A public hearing was held on March 7, 2006. No comments concerning the proposed amendments were received from the public at the hearing. However, two written comments were received following a focus group discussion. The proposed amendment in Item 3 would have required applicants to submit to the Department documentation that the Department of Natural Resources had approved the applicant's preliminary engineering report. Based on the written comments received, the Department changed the required submission of approval from the Department of Natural Resources to submission of the facilities plan, not approval of the plan. In Item 3, the final amendment was revised to reflect this change.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

These amendments will become effective on June 14, 2006.

The following amendments are adopted.

ITEM 1. Amend subrule 23.4(4) as follows:

23.4(4) Job creation, retention and enhancement fund. ~~Twenty-five~~ *Twenty* percent of funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA), and career link.

ITEM 2. Amend subrule 23.4(8) as follows:

23.4(8) Recaptured funds. Recaptured funds shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund. *As approved by the director, recaptured funds may be used to fund projects from the job creation, retention and enhancement fund or housing fund in order to respond to an immediate community or business need.* Recaptured funds remaining at the end of a program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to a community or business need.

ITEM 3. Amend subrule **23.6(3)** by amending paragraph "d" and adding **new** paragraph "e" as follows and relettering existing paragraphs "e" and "f" as "f" and "g":

d. Applicants shall submit preliminary engineering reports with their full applications *for drinking water projects.*

e. *Applicants shall submit facility plans with their full applications for wastewater projects.*

[Filed 4/21/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5099B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment seeks to address the shortage of school guidance counselors. Currently, a person can only serve as a school guidance counselor if the person has completed a school guidance counseling program or is eligible for a Class B two-year conditional license to serve as a counselor. To obtain a Class B license, the person must first be the holder of a valid teaching license. Thus, the only people who can serve as guidance counselors under the term of a Class B license are teachers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 1, 2006, as **ARC 4940B**. A public hearing on the amendment was held on March 21, 2006. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective June 14, 2006.

The following amendment is adopted.

Adopt the following **new** rule:

282—14.132(272) Requirements for a Class G license. A nonrenewable Class G license valid for two years may be issued to an individual who must complete a school guidance counseling practicum or internship in an approved program in preparation for the school guidance counselor endorsement. The Class G license may be issued under the following limited conditions:

14.132(1) Verification of a baccalaureate degree from a regionally accredited institution.

14.132(2) Verification from the institution that the individual is admitted and enrolled in an approved school guidance counseling program.

14.132(3) Verification that the individual has completed the coursework and competencies required prior to the practicum or internship.

Written documentation of the above requirements must be provided by the official at the institution where the individual is completing the approved school guidance counseling pro-

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gram and forwarded to the Iowa board of educational examiners with the application form for licensure.

[Filed 4/21/06, effective 6/14/06]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5098B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments are intended to assist those individuals who are having difficulty gaining the hours needed to renew the substitute authorization by providing additional time for the person holding the authorization to acquire the necessary credits needed for renewal by extending the duration of the authorization to three years but only increasing the renewal requirements by one credit. At the present time, it is very difficult for a person holding a substitute authorization to get the hours needed for the annual renewal.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 1, 2006, as **ARC 4939B**. A public hearing on the amendments was held on March 21, 2006. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective June 14, 2006. The following amendments are adopted.

ITEM 1. Amend subrule 14.143(2) as follows:

14.143(2) The fee for the substitute authorization is \$40 ~~85 for one year~~ *three years*.

ITEM 2. Amend subrule 14.143(3) as follows:

14.143(3) ~~The substitute authorization must be renewed annually.~~ Renewal requirements for the substitute authorization consist of a minimum of ~~one two~~ *two* renewal ~~unit units~~ equivalent to ~~15 30~~ clock hours and completion of a child and dependent adult abuse training program approved by the state abuse education review panel. A waiver of the approved child and dependent adult abuse training requirement may apply under the following conditions with appropriate documentation of any of the following:

a. to e. No change.

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ARC 5091B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455F.5, the Environmental Protection Commission hereby amends Chapter 144, "Household Hazardous Materials," Iowa Administrative Code.

Iowa Code chapter 455F includes in the definition of a household hazardous material hazardous waste and hazardous substances used for residential purposes. Adding hazardous waste and hazardous substances to the rule will make it consistent with the Iowa Code.

EPA has determined that color CRTs are a hazardous waste based on the toxicity characteristic leaching procedure (TCLP) test for lead. The average concentration of lead in leachate from EPA's TCLP is 22.2 milligrams per liter. Materials testing above 5 milligrams per liter of lead are classified as hazardous by EPA (see Federal Register, Volume 67, Number 113, dated June 12, 2002). Therefore, color CRTs will be added to the definition of household hazardous materials to reflect EPA's hazardous waste classification rules.

Retailers that sell household hazardous materials are required to obtain a household hazardous materials permit and post information materials provided by the Department. The permit fee is \$25 annually. By adding CRTs to the list of household hazardous materials, retailers who sell CRTs will be required to purchase the household hazardous materials (HHM) retailers permit each year and make information available to customers as to where they can properly dispose of household hazardous materials. Many CRT retailers are already required to obtain a household hazardous materials permit due to other items sold such as solvents, motor oil, gasoline and diesel fuel additives, waxes and polishes, oil-based or aerosol paints and caustic household cleaners.

Notice of Intended Action was approved by the Environmental Protection Commission at their November 2005 meeting and was published in the Iowa Administrative Bulletin on January 18, 2006, as **ARC 4825B**. The Department held a public hearing on February 8, 2006. No comments were received. In addition, The Department specifically contacted the Consumer Electronic Retailers Association and Iowa Retail Federation and invited them to submit written comments. Still, no comments were received. Therefore, no changes were made to the proposed amendment and no responsiveness summary is needed.

This amendment is intended to implement Iowa Code chapter 455F.

This amendment will become effective June 14, 2006.

The following amendment is adopted.

Amend rule 567—144.3(455F) as follows:

567—144.3(455F) Household hazardous materials. *This rule defines what materials constitute household hazardous materials when sold for use in a residence.*

144.3(1) Types of materials included. *Household hazardous materials include:*

a. *Any hazardous substance as defined in Iowa Code section 455B.411, subsection 2;*

b. *Any hazardous waste as defined in Iowa Code section 455B.411, subsection 3(a) and 3(b).*

144.3(1) 144.3(2) Products included. *Household hazardous materials include, but are not limited to, Any any brand,*

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grade, size or volume of the following products constitutes household hazardous materials:

- a. Motor oils and motor oil additives,
- b. Motor oil filters,
- c. Gasoline additives,
- d. Diesel fuel additives,
- e. Degreasers,
- f. Waxes and polishes (excluding nail polish),
- g. Solvents (excluding water),
- h. Paints (excluding latex-based paints),
- i. Lacquers,
- j. Thinners (excluding water),
- k. Caustic household cleaners,
- l. Spot and stain removers with a petroleum base,
- m. Petroleum-based fertilizers,
- n. *Color cathode ray tubes (CRTs)*.

144.3(2) 144.3(3) Exemptions. A household hazardous material does not include laundry detergents or soaps, dishwashing compounds, chlorine bleach, personal care products, personal care soaps, cosmetics, animal and human medications, and pharmaceuticals.

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ARC 5096B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services amends Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities," Iowa Administrative Code.

These amendments clarify expectations of provider organizations and update accreditation procedural requirements. Changes include the following:

- Rescinding the definition of "psychiatric rehabilitation practitioner" and adopting the definition of "intensive psychiatric rehabilitation practitioner" that eliminates the requirement for a graduate degree, lowers from two years to one year the amount of rehabilitation work experience required with a bachelor's degree, and includes persons certified as psychiatric rehabilitation practitioners by the United States Psychiatric Rehabilitation Association.
- Expanding the performance indicators for organization activities to include trending and tracking of incident report data and review of the organization's response to dangerous or threatening situations and to clarify specific applications of the performance indicators on internal review of individual records and identification of areas in need of improvement to organizations providing outpatient psychotherapy and counseling services.
- Requiring that organizations obtain verification of professional licenses and degrees above the bachelor's level from the primary sources (colleges and licensing agencies).
- Adding an environmental performance indicator for cleanliness and safety of toys and material used by children.

- Clarifying the performance indicator for documentation of legal restrictions and changing terminology regarding authorization to release information.

- Adding a performance indicator on the development of individual psychiatric crisis intervention plans for providers of outpatient psychotherapy and counseling, intensive psychiatric rehabilitation, day treatment, and partial hospitalization services.

- Reducing, clarifying, and reordering the performance indicators for intensive psychiatric rehabilitation.

- Adding and reordering performance indicators for outpatient psychotherapy and counseling services.

- Requiring organizations to give the Department written notice of changes in ownership, management, service delivery, service philosophy, or transfer of operations.

- Correcting the point totals and indicator values to correspond to the updated performance indicators.

These amendments do not provide for waivers in specified situations. Organizations may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4751B**. The Department held nine public hearings around the state. Five persons attended. The Department received written comments from 13 people. The Department has revised the proposed amendments because of these comments.

The following revisions have been made in Item 1 of the Notice of Intended Action:

- The definition of "advisory board" is further amended to remove a reference to the organization's board of directors.

- Proposed revisions to the definition of "board of directors" are replaced by an amendment to rescind the entire definition, since the term is no longer used in Chapter 24.

- Proposed revisions to the definition of "incident" were not adopted. The issue of how best to address medication errors needs further study.

- An amendment to the definition of "organization" is added to correct an obsolete Iowa Code reference.

- A new definition of "psychiatric crisis intervention plan" is added. It parallels the existing definition of "crisis intervention plan" but addresses potential psychiatric emergencies only.

The following revisions have been made in Item 2 of the Notice of Intended Action:

- New language in subparagraph 24.3(1)"b"(4) is amended to read as follows: "This review includes analysis of incident data at least annually to identify any patterns of risk to the health and safety of consumers."

- New language in subparagraph 24.3(1)"b"(7) is amended to read as follows: "Where applicable, the organization establishes a plan to resolve the problem of patients missing appointments."

- An amendment to subparagraph 24.3(2)"b"(3) is added so that the paragraph reads as follows:

"(3) Individuals using the services or family members of individuals using the services are represented on the organization's governing board or on an advisory board."

- Subparagraph 24.3(4)"b"(2) is amended to read as follows:

"(2) Has a process to verify qualifications of staff, including degrees, licenses, medication management training, and certification as required by the position, within 90 days of the staff person's employment. For staff hired after July 1, 2006,

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personnel files contain evidence that verification of professional licenses and college degrees at the bachelor's level or higher, as required by the position, was obtained from the primary source."

The following revisions have been made in Item 3 of the Notice of Intended Action:

- Indicators at subparagraphs 24.4(10)"b"(9), 24.4(11)"b"(5), 24.4(13)"b"(9), and 24.4(14)"b"(9) are amended to add the word "psychiatric" to the references to the phrase "crisis intervention plan" to clarify that this plan is more limited in scope than the plan required for case management and supportive community living services.
- A reference to skill programming is added to subparagraph 24.4(11)"b"(9), so that the second sentence reads: "Skill programming or skill teaching takes place."
- Language in subparagraphs 24.4(14)"b"(5) and (6) is changed to require documentation to be made "during or after each session."
- The reference to "narratives" in subparagraph 24.4(14)"b"(8) is changed to "documentation."

Revisions to the introductory paragraph of subrule 24.5(3) in Item 3 of the Notice of Intended Action were not adopted. Proposals for increasing consumer involvement in surveys will undergo further study.

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on April 20, 2006.

These amendments are intended to implement Iowa Code section 225C.6.

These amendments shall become effective on July 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule **441—24.1(225C)** as follows:

Amend the definitions of "advisory board" and "organization" as follows:

"Advisory board" means the board that reviews and makes recommendations to the ~~organization's board of directors~~ *organization* on the program being accredited. The advisory board shall meet at least three times a year and shall have at least three members, at least 51 percent of whom are not providers. The advisory board shall include representatives who have disabilities or family members of persons with disabilities. The advisory board's duties include review and recommendation of policies, development and review of the organizational plan for the program being accredited, review and recommendation of the budget for the program being accredited, and review and recommendation of the ~~total-quality~~ *performance* improvement program of the program being accredited.

"Organization" means:

1. A governmental entity or an entity that meets Iowa Code requirements for a business organization as a for-profit or not-for-profit business. These entities include, but are not limited to, a business corporation under Iowa Code chapter 490 or a nonprofit corporation under Iowa Code chapter 504A. 504 that provides a service accredited pursuant to the rules in this chapter.

2. A county, consortium of counties, or the department of human services that provides or subcontracts for the provision of case management.

3. A division or unit of a larger entity, such as a unit within a hospital or parent organization.

"Organization" does not include: an individual for whom a license to engage in a profession is required under Iowa Code section 147.2, any person providing a service if the person is not organized as a corporation or other business entity

recognized under the Iowa Code, or an entity that provides only financial, administrative, or employment services and that does not directly provide the services accredited under this chapter.

Rescind the definitions of "board of directors" and "psychiatric rehabilitation practitioner."

Adopt the following **new** definitions in alphabetical order:

"Intensive psychiatric rehabilitation practitioner" means a person who has at least 60 contact hours of training in intensive psychiatric rehabilitation and either:

1. Is certified as a psychiatric rehabilitation practitioner by the United States Psychiatric Rehabilitation Association; or

2. Holds a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and has at least one year of experience in the delivery of services to the population groups that the person is hired to serve.

"Psychiatric crisis intervention plan" means a personalized, individualized plan developed with the individual using the service that identifies potential personal psychiatric emergencies. This plan shall also include those life situations identified as problematic and the identified strategies and natural supports developed with the individual using the service to enable the individual to self-manage, alleviate, or end the crisis. This plan shall also include how the individual can access emergency services that may be needed.

ITEM 2. Amend rule 441—24.3(225C) as follows:

Amend subrule **24.3(1)**, paragraph "**b**," as follows:

b. Performance indicators. The organization:

(1) ~~Measures~~ *Annually measures* and assesses organizational activities and services accredited in this chapter ~~annually~~.

(2) Gathers information from individuals using the services, ~~from staff, and from family members~~.

(3) Implements an internal review of individual records for those services accredited under this chapter. *For outpatient psychotherapy and counseling services, the organization:*

1. *Reviews the individual's involvement in and with treatment.*

2. *Ensures that treatment activities are documented and are relevant to the diagnosis or presenting problem.*

(4) Reviews the organization's response to incidents reported under subrule 24.4(5) ~~and any other situation that may pose a danger or threat to staff or individuals using the services for necessity, appropriateness, effectiveness and prevention. This review includes analysis of incident data at least annually to identify any patterns of risk to the health and safety of consumers.~~

(5) *Reviews the organization's response to any situation that poses a danger or threat to staff or to individuals using the services for necessity, appropriateness, effectiveness, and prevention.*

(5) (6) Identifies areas in need of improvement.

(6) (7) Has a plan to address the areas in need of improvement. *Where applicable, the organization establishes a plan to resolve the problem of patients missing appointments.*

(7) (8) Implements the plan and documents the results.

Amend the performance indicators for human resources in subrule **24.3(2)**, paragraph "**b**," subparagraph (3), as follows:

(3) ~~The organization establishes a board of directors. The board includes individuals~~ *Individuals* using the services or

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family members of individuals using the services *are represented on the organization's governing board or establishes and implements on an advisory board.*

Amend the performance indicators for leadership in subrule **24.3(4)**, paragraph "**b**," subparagraph (2), as follows:

(2) Has a process to verify qualifications of staff, including degrees, licenses, medication management training, and certification as required by the position, *within 90 days of the staff person's employment. For staff hired after July 1, 2006, personnel files contain evidence that verification of professional licenses and college degrees at the bachelor's level or higher, as required by the position, was obtained from the primary source.*

Amend the performance indicators for organizational environment in subrule **24.3(5)**, paragraph "**b**," by adopting the following **new** subparagraph (6):

(6) All toys and other materials used by children are clean and safe.

ITEM 3. Amend rule 441—24.4(225C) as follows:

Amend subrule **24.4(5)** as follows:

Amend paragraph "**a**" as follows:

a. Performance benchmark. The organization completes an incident report for incidents that occur or are identified during times of direct contact by when organization staff first become aware that an incident has occurred.

Amend paragraph "**b**," subparagraph (1), introductory paragraph, and subparagraph (2), as follows:

(1) The organization has printed incident forms available that include documents the following information:

(2) The staff who were directly involved at the time of the incident or who first became aware of the incident prepare and sign the incident report before forwarding it to the supervisor.

Amend the performance indicators for confidentiality and legal status in subrule **24.4(6)**, paragraph "**b**," as follows:

b. Performance indicators.

(1) The organization obtains voluntary written consent authorization from the individual using the service, the individual's legal guardian, or other people authorized by law before releasing personal identifying information, medical records, mental health records, or any other confidential information.

(2) Staff complete releases voluntary written authorization forms in accordance with existing federal and state laws, rules, and regulations and maintain them in each individual file.

(3) Guardianship papers and probation, commitment Documentation regarding restrictions on the individual, such as guardianship, power of attorney, conservatorship, mental health commitments, or other court orders, are is placed in the individual's record, if applicable.

Amend the performance indicators for day treatment services in subrule **24.4(10)**, paragraph "**b**," by adopting the following **new** subparagraph (9):

(9) Individuals using the service participate in developing a detailed psychiatric crisis intervention plan that includes natural supports and self-help methods.

Amend the performance indicators for intensive psychiatric rehabilitation services in subrule **24.4(11)**, paragraph "**b**," by rescinding subparagraphs (1) through (17) and adopting the following **new** subparagraphs (1) through (12) in lieu thereof:

(1) Individuals using the service receive services from staff who meet the definition of intensive psychiatric rehabilitation practitioner. The intensive psychiatric rehabilitation supervisor has at least a bachelor's degree in a human ser-

vices field and 60 hours of training in intensive psychiatric rehabilitation.

(2) Individuals using the service receive four to ten hours per week of recognized psychiatric rehabilitation services. All services are provided for an identified period.

(3) Whenever possible, intensive psychiatric rehabilitative services are provided in natural settings where individuals using the service live, learn, work, and socialize.

(4) Significantly involved others participate in the planning and provision of services as appropriate and as desired by the individual using the service.

(5) Individuals using the service participate in developing a detailed psychiatric crisis intervention plan that includes natural supports and self-help methods.

(6) A readiness assessment is initially completed with staff to assist the individual in choosing a valued role and environment. The readiness assessment culminates in a score that documents the individual's motivational readiness.

(7) During the readiness development phase, staff document monthly in the individual's file changes in the individual's motivational readiness to choose valued roles and environments.

(8) During the goal-choosing phase, staff and the individual identify personal criteria, describe alternative environments, and choose the goal. These activities are documented in the individual's file.

(9) During the goal-achieving phase, the functional assessment and resource assessment are completed. Skill programming or skill teaching takes place. These activities are documented in the individual's file.

(10) During goal keeping, individuals using the service participate in discharge planning that focuses on coordinating and integrating individual, family, community, and organization resources for successful community tenure and the anticipated end of psychiatric rehabilitation services. Staff document increases in skill acquisition and skill competency.

(11) Staff document any positive changes in environmental status, such as moving to a more independent living arrangement, enrolling in an education program, getting a job, or joining a community group.

(12) On an ongoing basis and at discharge, staff or the individual using the service documents the level of individual satisfaction with intensive psychiatric rehabilitation services in each individual's file.

Amend the performance indicators for partial hospitalization services in subrule **24.4(13)**, paragraph "**b**," by adopting the following **new** subparagraph (9):

(9) Individuals using the service participate in developing a detailed psychiatric crisis intervention plan that includes natural supports and self-help methods.

Amend the performance indicators for outpatient psychotherapy and counseling services in subrule **24.4(14)**, paragraph "**b**," by rescinding subparagraphs (1) through (5) and adopting the following **new** subparagraphs (1) through (10) in lieu thereof:

(1) Individuals using the service are prepared for their role as partners in the therapeutic process at intake where they define their situations and evaluate those factors that affect their situations.

(2) Individuals using the service establish desired problem resolution at intake during the initial assessment.

(3) Psychiatric services other than psychopharmacological services are available from the organization as needed by the individual using the service.

(4) Psychopharmacological services are available from the organization as needed.

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(5) Staff document mutually agreed-upon treatment goals during or after each session. A distinct service plan document is not required.

(6) Staff document mutually agreed-upon supports and interventions during or after each session. A distinct service plan document is not required.

(7) Staff document in the progress notes the individual's status at each visit and the reasons for continuing or discontinuing services. A distinct discharge summary document is not required.

(8) Any assignment of activities to occur between sessions is documented in the following session's documentation.

(9) Individuals using the service who have a chronic mental illness participate in developing a detailed psychiatric crisis intervention plan that includes natural supports and self-help methods.

(10) The record documents that the organization follows up on individuals who miss appointments.

ITEM 4. Amend rule 441—24.5(225C) as follows:

Amend subrule **24.5(4)**, paragraph “b,” subparagraphs (2) and (3), as follows:

(2) Each of the ~~32~~ *34* indicators for organizational activities has a value of ~~.47~~ *.44* out of a possible score of 15.

(3) Each service has a separate weighting according to the total number of indicators applicable for that service, with a possible score of 70, as follows:

<u>Service</u>	<u>Number of indicators</u>	<u>Value of each indicator</u>
Case management	52 <i>51</i>	1.35 <i>1.37</i>
Day treatment	47 <i>48</i>	1.49 <i>1.46</i>
Intensive psychiatric rehabilitation	56 <i>51</i>	1.25 <i>1.37</i>
Supported community living	45	1.55
Partial hospitalization	47 <i>48</i>	1.49 <i>1.46</i>
Outpatient psychotherapy and counseling	24 <i>35</i>	2.92 <i>2.00</i>
Emergency	8	8.75
Evaluation	4	17.50

Amend subrule **24.5(5)**, paragraph “f,” by adopting the following new subparagraph (4):

(4) An organization must notify the division when there are changes in its ownership, structure, management, or service delivery.

Amend subrule 24.5(6) as follows:

24.5(6) Nonassignability. Accreditation shall not be assignable to any other organization or provider. Any person or other legal entity acquiring an accredited facility for the purpose of operating a service shall make an application as provided in subrule 24.5(2) for a new certificate of accreditation. Similarly, any organization having acquired accreditation and desiring to alter the service philosophy or transfer operations to different premises must notify the division *in writing* 30 calendar days before taking action in order for the division to review the change.

Rescind subrule 24.5(7) and adopt the following new subrule in lieu thereof:

24.5(7) Discontinuation.

a. Discontinued organization. A discontinued organization is one that has terminated all of the services for which it has been accredited. Accreditation is not transferable between organizations.

(1) An organization shall notify the division in writing of any sale, change in business status, closure, or transfer of ownership of the business at least 30 calendar days before the action.

(2) The organization shall be responsible for the referral and placement of individuals using the services, as appropriate, and for the preservation of all records.

b. Discontinued service. An organization shall notify the division in writing of the discontinuation of an accredited or certified service at least 30 calendar days before the service is discontinued.

(1) Notice of discontinuation of a service shall not be initiated during the 30 days before the start of a survey. Once a survey has begun, all services shall be considered in determining the organization's accreditation score.

(2) The organization shall be responsible for the referral and placement of individuals using the services, as appropriate, and for the preservation of all records.

ITEM 5. Amend rule 441—24.6(225C), introductory paragraph and subrule 24.6(1), as follows:

441—24.6(225C) Deemed status. The commission ~~may~~ *shall* grant deemed status to organizations accredited by a recognized national, not-for-profit, accrediting body when the commission determines the accreditation is for similar services. The commission ~~shall~~ *may* also grant deemed status for supported community living services to organizations that are certified under the Medicaid home- and community-based services (HCBS) mental retardation waiver.

24.6(1) National accrediting bodies.

a. The national accrediting bodies currently recognized as meeting division criteria for possible deeming are:

1. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

2. The Commission on Accreditation of Rehabilitation Facilities (CARF).

3. The Council on Quality and Leadership in Supports for People with Disabilities (The Council).

4. Council on Accreditation of Services for Families and Children (COA).

b. The accreditation credentials of these national bodies must specify the type of organization, programs, and services that ~~they~~ *these bodies* accredit and include targeted population groups, if appropriate.

c. Deemed status means that the division is accepting an outside body's review, assessment, and accreditation of an organization's functioning and services. Therefore, the accrediting body doing the review must be assessing categories of organizations and types of programs and services corresponding to those described under this chapter. *An organization that has deemed status must adhere to and be accountable for the rules in this chapter.*

d. When an organization that is nationally accredited requests deemed status for services not covered by the national body's standards but covered under this chapter, the division shall accredit those services. Division staff shall provide technical assistance to organizations with deemed status as time permits.

ITEM 6. Amend subrule 24.7(3), introductory paragraph, as follows:

24.7(3) Investigation of complaint. If the division concludes that the complaint is reasonable, has merit, and is based on a violation of rules in this chapter, it may make an investigation of the organization. The division may investigate complaints by an office audit or by an on-site visit *investigation*. The division shall give priority for on-site visits

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investigations to instances when individuals using the service are in immediate jeopardy.

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ARC 5077B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

Section 6036 of the Deficit Reduction Act of 2005, which was signed in February 2006, requires Medicaid applicants and recipients to furnish documentation proving that they are citizens or nationals of the United States. This amendment incorporates that requirement into Iowa Medicaid rules and lists acceptable documentation.

Acceptable documentation for people with "national" status consists of documents issued by the U.S. Citizenship and Immigration Services. Acceptable documentation for people who are U.S. citizens is a U.S. passport or, most commonly, a birth certificate in combination with some other identification, such as a driver's license. Under the legislation, a driver's license alone is not sufficient identification unless the state that issued the license has verified the person's citizenship before issuing the license. An Iowa driver's license does not meet this standard.

The federal legislation imposes this verification requirement effective July 1, 2006. Under the proposed rules, a Medicaid application will not be approved after that date unless each applicant has furnished the required verification. The requirement will be imposed on people receiving Medicaid benefits at the time of their next eligibility review. If acceptable verification is not furnished at that time, the person's Medicaid eligibility will end.

This amendment does not provide for waivers in specified situations because the Deficit Reduction Act of 2005 does not allow any exceptions.

The Council on Human Services adopted this amendment on April 12, 2006.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because 2005 Iowa Acts, chapter 175, section 6(5), authorizes the Department to adopt emergency rules when necessary to comply with federal Medicaid requirements. Notice and public participation are also impracticable in that there is not enough time to allow for both the public comment period and the normal implementation period and still meet the effective date of the federal legislation. The Department does not want to waive the implementation period because this amendment imposes new requirements on people seeking Medicaid benefits.

This amendment is also published herein under Notice of Intended Action as **ARC 5076B** to allow for public comment.

This amendment shall become effective on July 1, 2006.

This amendment is intended to implement Iowa Code section 249A.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule **75.11(2)** by adopting **new** paragraphs "**c**," "**d**," and "**e**" as follows:

c. Effective July 1, 2006, applicants who attest that they are citizens or nationals of the United States shall present satisfactory documentation of citizenship or nationality upon application for Medicaid as defined in paragraph "d" or "e."

(1) Persons receiving Medicaid benefits as of July 1, 2006, shall present this documentation at the next redetermination of their Medicaid eligibility.

(2) A reference to a form in paragraph "d" or "e" includes any successor form.

d. Any one of the following documents shall be accepted as satisfactory documentation of citizenship or nationality:

(1) A United States passport.

(2) Form N-550 or N-570 (Certificate of Naturalization) issued by the U.S. Citizenship and Immigration Services.

(3) Form N-560 or N-561 (Certificate of United States Citizenship) issued by the U.S. Citizenship and Immigration Services.

(4) A valid state-issued driver's license or other identity document described in Section 274A(b)(1)(D) of the United States Immigration and Nationality Act, but only if the state issuing the license or document either:

1. Requires proof of United States citizenship before issuance of the license or document; or

2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

(5) Another document that provides proof of United States citizenship or nationality and provides a reliable means of documentation of personal identity, as the Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

e. Satisfactory documentation of citizenship or nationality may also be demonstrated by the combination of:

(1) Any identity document described in Section 274A(b)(1)(D) of the United States Immigration and Nationality Act or any other documentation of personal identity that provides a reliable means of identification, as the Secretary of the U.S. Department of Health and Human Services finds by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(D)(ii), and

(2) Any one of the following:

1. A certificate of birth in the United States.

2. Form FS-545 or Form DS-1350 (Certification of Birth Abroad) issued by the U.S. Citizenship and Immigration Services.

3. Form I-97 (United States Citizen Identification Card) issued by the U.S. Citizenship and Immigration Services.

4. Form FS-240 (Report of Birth Abroad of a Citizen of the United States) issued by the U.S. Citizenship and Immigration Services.

5. Another document that provides proof of United States citizenship or nationality, as the Secretary of the U.S.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department of Health and Human Services may specify pursuant to 42 U.S.C. Section 1396b(x)(3)(C)(v).

[Filed Without Notice 4/17/06, effective 7/1/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5080B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment adds the Iowa Department of Public Health as a Medicaid provider for lead investigation services. The federal Centers for Disease Control is requiring that all applicants for childhood lead poisoning prevention grants be Medicaid providers. The Iowa Department of Public Health certifies agencies to perform elevated blood lead inspections but has not been enrolled in the Iowa Medicaid program. This change in the conditions for participation in the Medicaid program will allow the Iowa Department of Public Health to enroll as a Medicaid provider and qualify for federal grant funds. The Iowa Department of Public Health performs lead inspections only in areas that have no local providers certified to provide the services, so the fiscal impact to the Medicaid program is minor.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4889B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations because it expands opportunities for participation in the Medicaid program. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on April 12, 2006.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment shall become effective on July 1, 2006.

The following amendment is adopted.

Rescind rule 441—77.40(249A) and adopt the following **new** rule in lieu thereof:

441—77.40(249A) Lead inspection agencies. The Iowa department of public health and agencies certified by the Iowa department of public health pursuant to 641—subrule 70.5(5) are eligible to participate in the Medicaid program as providers of lead inspection services.

This rule is intended to implement Iowa Code section 249A.4.

[Filed 4/17/06, effective 7/1/06]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5079B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments eliminate the requirements for infant and toddler programs and local education agencies participating in the Medicaid program to certify that the nonfederal share of the costs of services under these programs is paid from unrestricted public funds and is not paid from federal funds.

The Department has determined that this certification is not necessary because both the federal and nonfederal shares of the reimbursement these providers receive for Medicaid services are paid initially by the Medicaid program. These providers are required to remit the nonfederal share of the payment to the Department because there are no state Medicaid funds appropriated for these services. Removal of the certification requirement also eliminates the need for these providers to track these funds separately in their accounts.

These amendments also make technical changes to:

- Correct references to the acronym for the Medicaid Patient Access to Service System (MediPASS).
- Add missing implementation statements for several rules.
- Update the implementation statement for pharmacy case management to convert a reference to a session law.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4902B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations because they remove requirements that are currently imposed on agencies. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 12, 2006.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on July 1, 2006.

The following amendments are adopted.

ITEM 1. Strike the term "Medipass" and insert in lieu thereof "MediPASS" wherever the term appears in subrules **78.1(23)**, **78.21(3)**, and **78.39(3)**.

ITEM 2. Amend rules **441—78.22(249A)**, **441—78.23(249A)**, **441—78.33(249A)**, **441—78.41(249A)**, **441—78.43(249A)**, **441—78.49(249A)**, and **441—78.50(249A)** by inserting the following **new** implementation sentence at the end of each rule:

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend the implementation sentence for rule **441—78.47(249A)** as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

This rule is intended to implement *Iowa Code section 249A.4* and 2000 Iowa Acts, *Senate File 2435 chapter 1228*, section 9.

ITEM 4. Amend subrule **78.49(5)** as follows:

Rescind and reserve paragraph “a.”

Amend paragraph “c” as follows:

c. The infant and toddler program provider ~~has certified on~~ *shall sign and return* Form 470-3816, Medicaid Billing Remittance, ~~that along with the funds remitted for the non-federal share of the costs of the services are not federal funds and are unrestricted public funds available for match pursuant to 42 CFR 433.51 as amended January 26, 1993 specified on the form.~~

ITEM 5. Amend subrule **78.50(4)** as follows:

Rescind and reserve paragraph “a.”

Amend paragraph “c” as follows:

c. The local education agency provider ~~has certified on~~ *shall sign and return* Form 470-3816, Medicaid Billing Remittance, ~~that along with the funds remitted for the nonfederal share of the costs of the services are not federal funds as specified on the form.~~

[Filed 4/17/06, effective 7/1/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5081B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments update rules on distribution of payments to hospitals from the Graduate Medical Education and Disproportionate Share Fund. These amendments revise the distribution of payments for hospitals that qualify to receive payments from the fund for inpatient or outpatient services using claims from state fiscal year 2006. These changes will allow distribution from the fund in state fiscal year 2007 to be based on more current information gained from the hospital rebasing project.

These amendments also make technical changes to:

- Update the Internet address for Medicaid provider fee schedules.
- Correct references to the Iowa Medicaid Enterprise Provider Cost Audits and Rate-Setting Unit.
- Replace definitions of “peer review organization (PRO)” with definitions of “quality improvement organization” or “QIO” in conformity with changes in federal regulations and update references to the organization. In Iowa, most QIO functions are performed by the entity under contract with the Iowa Medicaid Enterprise as the Medical Services Unit. The Iowa Foundation for Medical Care currently holds this contract.
- Update the address for submission of requests for interim payments for Medicaid patients who have exceptionally long hospital stays.

- Update the mailing address for submission of provider cost reports and add the address for submitting cost reports by electronic mail.

- Correct references to the acronym for the Medicaid Patient Access to Service System (MediPASS).

- Replace a reference to a session law with the corresponding Iowa Code reference.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4901B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations because all hospitals should be subject to the same rules on distribution of payments from the Graduate Medical Education and Disproportionate Share Fund and because the other amendments are technical in nature. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 12, 2006.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on July 1, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 79] is being omitted. These amendments are identical to those published under Notice as **ARC 4901B**, IAB 2/15/06.

[Filed 4/17/06, effective 7/1/06]

[Published 5/10/06]

[For replacement pages for IAC, see IAC Supplement 5/10/06.]

ARC 5083B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

This amendment adopts by reference changes to federal occupational safety and health regulations. The changes revoke a slip-resistance provision in the steel erection standard that was scheduled to go into effect July 18, 2006. The U.S. Department of Labor, Occupational Safety and Health Administration determined the technological advances necessary for implementation and enforcement of the slip-resistance provision have not yet materialized.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 88 and to make Iowa's occupational safety and health regulations more current and consistent with federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4943B** on March 1, 2006. No public comments were received. The adopted amendment is identical to that published under Notice except that the Federal Register citation has been corrected.

LABOR SERVICES DIVISION[875](cont'd)

This amendment will become effective June 14, 2006.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is adopted.

Amend rule **875—26.1(88)** by inserting the following at the end thereof:

71 Fed. Reg. 2885 (January 18, 2006)

[Filed 4/18/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5087B**LATINO AFFAIRS DIVISION[433]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216A.16, the Iowa Division of Latino Affairs hereby rescinds Chapter 2, "Interpreters in Legal Proceedings," and adopts new Chapter 2, "Qualification of Language Interpreters," Iowa Administrative Code.

These adopted rules expand current Iowa Division of Latino Affairs responsibilities as related to Spanish language interpreters. The rules create a qualification mechanism for Spanish language interpreters working for administrative agencies, health agencies, social service agencies, and the courts.

The adopted rules will improve compliance with Title VI of the United States Civil Rights Code. In a clarification of Title VI of the Civil Rights Act of 1964, the federal Office for Civil Rights stipulated in 2000 that any entity receiving federal funds, including health care organizations receiving Medicaid and State Children's Health Insurance Program (SCHIP) funds, must provide no-cost language assistance services to patients with limited English proficiency. Therefore, these rules are not subject to waiver.

The adopted rules were developed in eight stages: (1) On July 1, 2004, over 200 concerned Iowans from 32 different communities attended a forum/hearing designed to gather input from individuals affected by language interpretation; (2) on October 26, 2004, a set of draft rules was reviewed by an Administrative Rules Subcommittee that included representatives of the Iowa Commission of Latino Affairs and interested individuals from each of the affected constituencies; (3) in December 2004, revised draft rules were disseminated via electronic media to the Administrative Rules Subcommittee for additional comments; (4) on March 2, 2005, a Notice of Intended Action was initially published in the Iowa Administrative Bulletin as **ARC 4030B**; (5) on March 24, 2005, a public hearing was held and, as a result of public comments, that Notice was terminated and a new rule making begun; (6) on March 1, 2006, a new Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4930B** and the Notice of Intended Action published as **ARC 4030B** was officially terminated; (7) on March 24, 2006, a public hearing was held and comments considered; (8) on April 14, 2006, the Iowa Commission of Latino Affairs adopted these administrative rules for Spanish language interpreters.

Changes were made to the adopted rules to clarify definitions and to add definitions of "qualified interpreter" and

"moral turpitude." In addition, changes were made to clarify training and competency requirements for approved training agencies and to extend to five years the period of time within which continuing education hours must be completed. The introductory paragraph of rule 433—2.4(216A) was changed to better describe the requirements for criminal history checks. Other nonsubstantive and technical changes were made for consistency and to improve the organization of the rules.

These rules are intended to implement Iowa Code section 216A.15(9).

These rules will become effective June 14, 2006.

The following amendment is adopted.

Rescind 433—Chapter 2 and insert in lieu thereof the following **new** chapter:

CHAPTER 2**QUALIFICATION OF LANGUAGE INTERPRETERS****433—2.1(216A) Definitions.**

"APLT" means an approved proficiency language test.

"ATA" means approved training agency and refers to an agency that has met the ICLA requirements for administering the interpreter qualification program.

"CI" means certified interpreter and refers to a person who has been trained and has passed a state or national or both certification interpretation program at the general level or specialized level. ICLA will encourage QSIs to become CIs.

"Client" means the person who is in need of an interpreter's services.

"Contact hour" means 60 minutes of uninterrupted instruction.

"ICLA" means the Iowa commission of Latino affairs.

"IDLA" means the Iowa division of Latino affairs of the department of human rights.

"Interpreter" means a person who translates orally for parties conversing in different languages or translates orally from written documents, or both.

"Moral turpitude" means an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals. Examples of moral turpitude may include, but are not limited to, the following:

1. Any act or pattern of conduct involving dishonesty, fraud, or deception;
2. Any act or pattern of conduct of harassment or stalking;
3. Any criminal act of sexual misconduct;
4. Any illegal act of selling, delivering, possessing with the intent to deliver, or manufacturing drugs;
5. Conviction resulting from domestic abuse;
6. Any criminal act that occurs when a person is acting as an interpreter.

"Provider" means the professional or organization utilizing an interpreter to communicate with a client.

"QGI" means qualified general interpreter and refers to a person who has met all the requirements for general interpreting set by the Iowa commission of Latino affairs or its delegate.

"QGITP" means a qualified general interpreter training program.

"QSI" means qualified specialized interpreter and refers to a person who has met all the specialization requirements set by the Iowa commission of Latino affairs or its delegate. Specialization certification fields include: court interpretation; health interpretation; and social services interpretation,

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which includes, but is not limited to, education, business, government, and agriculture.

“QSITP” means a qualified specialized interpreter training program.

“Qualified interpreter” means a person who has met the requirements established by ICLA and has been placed on the statewide roster of qualified interpreters.

433—2.2(216A) Purpose. The purpose of these rules is to:

1. Comply with Iowa Code section 216A.15, subsection 9.
2. Develop a mechanism for establishing the qualifications for Spanish/English interpreters, thus identifying a pool of qualified professional interpreters.
3. Develop a system which improves the quality of interpretation but is still cost-effective for providers, interpreters, and clients.
4. Professionalize interpreters by providing professional standards and a code of ethics.
5. Develop an evaluation system for organizations to assess the language skills of employees and applicants.
6. Develop an interpreter qualification system that is replicable and expandable into other languages.
7. Develop a qualification process that focuses on training the interpreters rather than on a single certification test.
8. Encourage Iowa’s interpreters to become nationally certified.

433—2.3(216A) Statewide roster of qualified interpreters. IDLA shall prepare, maintain, and publish a list of individuals who have been deemed qualified as either general or specialized Spanish/English language interpreters, or both. Interpreters will be deemed qualified at a specific certification level if they pass the criminal background check and meet the minimum requirements regarding age, education, language proficiency, and training and meet other requirements set by the ICLA.

NOTE: Persons who provide interpreter services in Iowa may represent themselves as qualified interpreters only if they are currently in the statewide roster of qualified interpreters.

433—2.4(216A) Criminal background check. Criminal history checks will be performed on all applicants seeking qualification by IDLA. A person shall not be deemed qualified as a QGI or QSI if the person has been convicted of either of the following:

1. A felony in a court of this or any other state or of the United States. An offense is a felony if it is so classified by the law under which the person is convicted at the time of the person’s conviction.
2. Any crime in a court of this or any other state or of the United States, deemed to evidence moral turpitude, dishonesty, fraud, deceit, or misrepresentation.

433—2.5(216A) Approved training agency. For an organization to be considered an ATA, it must be able to demonstrate a potential interpreter’s language competency in all of the following:

1. Spoken English;
2. Spoken Spanish;
3. Reading of English; and
4. Reading of Spanish.

433—2.6(216A) Approved proficiency language test. An approved proficiency language test (APLT) is an official, standardized test approved by ICLA and used by an ATA to evaluate and determine the level of language proficiency of

bilingual candidates who want to become either general or specialized qualified interpreters.

433—2.7(216A) QGI eligibility; qualified general interpreter training program.

2.7(1) Minimum criteria for QGI eligibility. In order for a person to be eligible to become a QGI and to enroll in a QGITP, the person shall:

- a. Have obtained a high school diploma or equivalent;
- b. Be 18 years of age or older;
- c. Have no criminal background;
- d. Have passed the APLT in Spanish and in English.

2.7(2) For an organization to become an ATA, the organization’s QGITP curriculum must demonstrate the ability to build competency in the following areas:

- a. Culture;
- b. Interpretation methodology;
- c. Professionalism and ethics;
- d. Reading translation skills;
- e. Interpreter self-evaluative assessment tools and techniques;
- f. Overview of state and national interpreter certification and credentialing requirements; and
- g. Idioms, slang, and linguistic origin and development.

2.7(3) The ICLA shall accredit the QGITP, and the ATA that will develop such program shall be under ICLA supervision.

2.7(4) In addition to the curriculum requirements, a QGITP must include a practice laboratory and a comprehensive exit evaluation.

2.7(5) Contact hour requirements. In order to be approved by IDLA, a training program curriculum must consist of a minimum of 150 student contact hours, of which 30 are supervised practice hours.

433—2.8(216A) QSI qualifications; qualified specialized interpreter training program.

2.8(1) In order for a person to become a QSI, the person must be a QGI in good standing and have successfully completed a QSITP.

2.8(2) For an organization to become an ATA for the QSITP, its curriculum must demonstrate the ability to build competency in the following areas:

- a. Vocabulary specific to the field of specialization;
- b. Conceptual/theoretical principles of the field of specialization;
- c. Ethics specific to the field of specialization;
- d. Cultural competency specific to the field of specialization;
- e. Expertise in the interpretation specializations of court, health, and social services.

2.8(3) The ICLA shall accredit the QSITP, and the ATA that will develop such program shall be under ICLA supervision.

2.8(4) In addition to the curriculum requirements, a QSITP must include a practice laboratory specific to the field of specialization and a comprehensive exit evaluation.

2.8(5) Contact hour requirements. In order to be approved by IDLA, an interpreter specialization program curriculum must consist of a minimum of 80 student contact hours, of which 20 are supervised practice hours.

433—2.9(216A) Continuing education requirements. In order to maintain qualification status as a QGI or QSI, the QGI or QSI shall complete a minimum of 30 contact hours of training every five years.

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433—2.10(216A) Experience-based or out-of-state interpreter transferability.

2.10(1) Review of certificates or alternate training. In extraordinary cases, the ICLA or its delegate may review alternative individual certification or professional experience for compatibility with the QGI and QSI requirements. The ICLA or its delegate may grant full or partial credit toward the QGI or QSI requirements.

2.10(2) Complete adoption of program. If the ICLA or its delegate has deemed an alternate program to be compatible with IDLA standards in the program's entirety, state qualification as a QGI or QSI will be granted to a person who has successfully completed the alternate program.

2.10(3) Partial adoption of program. If the ICLA or its delegate has determined that all ICLA requirements have not been met by the alternate program, additional coursework will be required before state qualification as a QGI or QSI will be granted to a person who has successfully completed the alternate program.

433—2.11(216A) Certified oral language court interpreters. Requirements for certified court interpreters may be found at Iowa Code sections 622A.1 to 622A.8. Additional requirements are applicable for court-certified interpreters. The additional requirements may be found at Iowa Court Rules, chapters 14 and 15.

433—2.12(216A) Fees. Reserved.

433—2.13(216A) Disciplinary actions.

2.13(1) A qualified general or specialized interpreter shall be prohibited from interpreting in Iowa if the interpreter has been convicted of a felony in any jurisdiction or any other state of the United States. A qualified general or specialized interpreter shall be subject to disciplinary action for any misconduct or violation of the ethics and code of professional conduct for interpreters.

2.13(2) Disciplinary process. ICLA shall establish a process for reviewing and responding to complaints or other evidence of interpreter misconduct under rule 433—2.13(216A).

2.13(3) Types of sanctions. ICLA reserves the right to administer the corresponding sanctions to an interpreter after concluding that there are grounds for sanction, including removal of the interpreter from the statewide roster of qualified interpreters.

2.13(4) Reestablishing the right to interpret under ICLA procedures. ICLA reserves the right to reinstate the interpreter to the statewide roster of qualified interpreters.

433—2.14(216A) Ethics and code of professional conduct for interpreters.

2.14(1) Accuracy and completeness. An interpreter shall render a complete and accurate interpretation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

a. An interpreter has a twofold role:

(1) To ensure that the interpreter reflects precisely what was said by all pertinent parties; and

(2) To place persons with limited proficiency in the English language on an equal footing with persons who understand English.

To fulfill these roles, an interpreter must apply the interpreter's best skills and judgment to preserve the meaning of what is said, as faithfully as possible and without editing. The interpreter should express the style or register of speech,

the ambiguities and nuances of the speaker, and the level of language that best conveys the original meaning of the source language. Verbatim, "word for word," and literal oral interpretations are inappropriate when they distort the meaning of what is said in the source language. However, all spoken statements, including misstatements, should be interpreted, even if they appear unresponsive, obscene, rambling, or incoherent.

b. The interpreter's obligation to preserve accuracy includes the duty to correct any errors of interpretation discovered while interpreting.

c. The interpreter's ethical responsibility to interpret accurately and completely includes the responsibility of being properly prepared for interpreting assignments, and is especially important when the situation or documents include highly specialized terminology and subject matter.

2.14(2) Conveying cultural frameworks. An interpreter shall explain cultural differences or practices to providers and clients when appropriate. The interpreter, therefore, must be mindful of those occasions where unshared cultural beliefs and assumptions can create a barrier to effective communication. In these situations, the role of interpreter is twofold:

a. To identify the possibility that a cultural misunderstanding is creating a barrier to communication; and

b. To assist both the provider and client in exploring with each other what this barrier may be.

2.14(3) Representation of qualifications. An interpreter shall accurately and completely represent the interpreter's certifications, training, and experience. An interpreter shall promptly report to the provider any disciplinary action taken against the interpreter.

2.14(4) Impartiality and avoidance of conflict of interest.

a. An interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. An interpreter shall disclose any real or perceived conflict of interest.

b. An interpreter shall avoid any conduct or behavior that presents the appearance of favoritism toward the client or provider. An interpreter should maintain professional relationships with clients, discourage personal dependence on the interpreter, and avoid participation in the interaction other than as an interpreter.

c. An interpreter shall strive for professional detachment. Verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions must be avoided at all times.

d. An interpreter shall not solicit or accept any payment, gift or gratuities in addition to compensation.

e. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to all concerned parties. An interpreter should divulge only necessary information when disclosing the conflict of interest. The disclosure shall not include privileged or confidential information. The following circumstances create potential conflicts of interest that must be disclosed:

(1) The interpreter is a friend, associate, or relative of a client or provider.

(2) For any reason, the interpreter's independence of judgment would be compromised in the course of providing services.

The existence of either of the above-mentioned circumstances shall be carefully evaluated by all pertinent parties, but does not alone disqualify an interpreter from providing services if the interpreter is able to render services objectively. The interpreter shall disclose any indication that the recipient of interpreting services views the interpreter as

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biased. If an actual or apparent conflict of interest exists, the parties shall decide whether removal of the interpreter is appropriate based upon the totality of the circumstances.

2.14(5) Professional demeanor. An interpreter shall conduct the services of interpreting in a manner consistent with the dignity of the professional situation. An interpreter shall know and observe the established protocol, rules, and procedures for delivering interpreting services. While speaking, an interpreter shall speak at a rate and volume that enables the interpreter to be heard and understood. An interpreter shall be as unobtrusive as possible and shall not seek to draw inappropriate attention to the interpreter while performing professional duties, including anytime the interpreter is present, even though not actively interpreting.

2.14(6) Interpreter positioning. An interpreter should avoid obstructing the view of anyone involved in the interaction, but should be appropriately positioned to facilitate communication.

2.14(7) Confidentiality. An interpreter shall protect the confidentiality of all privileged and other confidential information. An interpreter must uphold the confidentiality of any communications between other persons or agencies and the client. An interpreter must also refrain from repeating or disclosing information obtained by the interpreter in the course of employment.

2.14(8) Reporting criminal intent. In the event an interpreter is providing services to a party and becomes aware of an intention to inflict harm or commit a crime, the interpreter shall immediately disclose the information to all pertinent parties. In an emergency, the interpreter shall disclose the information to an appropriate authority.

2.14(9) Information for personal gain. An interpreter shall not take advantage of knowledge obtained in the performance of duties, or by the interpreter's access to records, facilities, or privileges, for the interpreter's own or another's personal gain.

2.14(10) Restriction of public comment. An interpreter shall not publicly discuss, report or offer an opinion concerning a matter in which the interpreter is or has been engaged, even when that information is not privileged or required by law to be confidential, except to facilitate training and education.

Generally, an interpreter should not discuss interpreter assignments with anyone other than persons who have a formal duty associated with the case. However, an interpreter may share information for training and education purposes, divulging only so much information as is required to accomplish this purpose. Unless so ordered by a court, an interpreter must never reveal privileged or confidential information for any purpose, including training and education.

2.14(11) Scope of practice. An interpreter shall be limited to interpreting and shall not give advice, express personal opinions to individuals for whom the interpreter is interpreting, or engage in other activities which may be construed to constitute a service other than interpreting while serving as an interpreter.

2.14(12) Assessing and reporting impediments to services. An interpreter shall assess at all times the interpreter's ability to deliver services. When an interpreter has any reservation about the interpreter's ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the appropriate authority.

2.14(13) Duty to report violations. An interpreter shall report to the proper authority any effort to impede the interpreter's compliance with any law, any provision of this code of conduct, or any other official policy governing interpreting.

2.14(14) Professional development. An interpreter shall strive to improve the interpreter's skills and knowledge and advance the profession through activities such as professional training and education and through interaction with colleagues and specialists in related fields. An interpreter shall improve the interpreter's interpreting skills and increase the interpreter's knowledge of the languages in which the interpreter works professionally, including past and current trends in slang, idiomatic expression, changes in dialect, technical terminology and social and regional dialects.

2.14(15) Breach of ethics. Any breach or perceived breach of ethics shall be reported to IDLA for investigation.

2.14(16) Specialized court, health, and social services interpreters shall meet the ethics requirements and code of professional conduct of their respective field of interpretation.

These rules are intended to implement Iowa Code section 216A.15.

[Filed 4/18/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5071B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners amends Chapter 40, "Administrative and Regulatory Authority for the Board of Chiropractic Examiners," and Chapter 45, "Discipline for Chiropractic Physicians," Iowa Administrative Code.

The amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4883B**.

A public hearing was held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comment was received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Chiropractic Examiners on April 12, 2006.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [40.1, 45.5] is being omitted. These amendments are identical to those published under Notice as **ARC 4883B**, IAB 2/15/06.

[Filed 4/13/06, effective 6/14/06]

[Published 5/10/06]

[For replacement pages for IAC, see IAC Supplement 5/10/06.]

ARC 5072B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners amends Chapter 43, "Practice of Chiropractic Physicians," Iowa Administrative Code.

The amendment clarifies and modifies the utilization and cost control review (UCCR) committee process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4885B**. A public hearing was held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments were received relating to the authority of the UCCR committee, course requirements and allowance of multiple committees. In response to public comment, the Board removed the requirement that a utilization review course be approved by the Board.

This amendment was adopted by the Board of Chiropractic Examiners on April 12, 2006.

This amendment will become effective June 14, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendment is adopted.

Amend rule 645—43.3(514F) as follows:

645—43.3(514F) Utilization and cost control review.

43.3(1) The board shall establish utilization and cost control review (UCCR) committee(s). *A UCCR committee shall be established by approval of the board upon a showing that the committee meets the requirements of this rule. The names of the each committee and a list of committee members shall be on file with the board and available to the public. The designation of the committee members shall be reviewed annually. As a condition of board approval, each committee shall agree to submit to the board an annual report which meets the requirements of this rule.*

43.3(2) Members Each member of the a UCCR committee shall:

- a. Hold a current license in Iowa.
- b. Have practiced chiropractic in the state of Iowa for a minimum of five years prior to appointment.
- c. Be actively involved in a chiropractic practice during the term of appointment as a UCCR committee member.
- d. Have no pending board disciplinary actions ~~action, or discipline~~ no disciplinary action taken during the three years prior to appointment, and no discipline disciplinary action pending or taken during the period of appointment.
- e. Have no malpractice awards granted against the appointed committee member judgment awarded or settlement paid during the three years prior to appointment or during the period of appointment.
- f. Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.
- g. ~~Have completed a utilization review course that has been previously approved by the board.~~

43.3(3) Procedures for utilization and cost control review. A request for review may be made to the board UCCR committee by any person governed by the various chapters of Title XIII, subtitle 1, of the Iowa Code, self-insurers for health care benefits to employees, other third-party payers, chiropractic patients or licensees.

a. There shall be a reasonable fee, as established by the board UCCR committee and approved by the board, for services rendered, which will be made payable directly to the UCCR committee that conducts the review. ~~The committee~~ Each UCCR committee approved by the board shall make a yearly accounting to the board.

b. A request for service shall be submitted to the executive director of the UCCR committee on an approved a submission form approved by the board, and shall be accompanied by ~~four the number of copies of all information required by the UCCR committee.~~ All references to the identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the UCCR committee. The information shall be forwarded to the UCCR committee.

c. The UCCR committee shall respond in writing to the parties involved with its findings and recommendations within 90 days of the date the request for review was submitted. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The UCCR committee shall submit a quarterly report of its activities to the board. The UCCR committee shall meet at least annually with the board chairperson or the board chairperson's designee.

43.3(4) Types of cases reviewed shall include:

- a. Utilization.
- (1) Frequency of treatment;
- (2) Amount of treatment;
- (3) Necessity of service;
- (4) Appropriateness of treatment.
- b. Usual and customary service.

43.3(5) Criteria for review may include but are not limited to:

- a. Was diagnosis compatible and consistent with information?
- b. Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated unrelated to history or diagnosis?
- c. Were clinical records adequate, complete, and of sufficient frequency?
- d. Was treatment consistent with diagnosis?
- e. Was treatment program consistent with scientific knowledge and with academic and clinical training provided in accredited chiropractic colleges?
- f. Were charges reasonable and customary for the service?

43.3(6) Confidentiality. Members of the UCCR committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

43.3(7) Annual report. Each UCCR committee shall annually submit a report to the board, and shall meet to review that report with the board chairperson or designee upon the board's request. The annual report shall include the following information:

- a. The fee to be charged the party requesting UCCR review.
- b. A report regarding the activities of the committee for the past year, including a report regarding each review conducted, the conclusions reached regarding that review, and any recommendations made following the review.

43.3(7 8) Action of the UCCR committee does not constitute an action of the board. A conclusion or recommendation,

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or both, made by a UCCR committee does not constitute a decision of the board.

[Filed 4/13/06, effective 6/14/06]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5073B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners amends Chapter 44, "Continuing Education for Chiropractic Physicians," Iowa Administrative Code.

The amendments provide for chiropractors to obtain all continuing education hours by independent study if they choose.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4886B**. A public hearing was held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Comments were received both in favor of and against the rule change. The Board deliberated about the comments received and considered additional comments presented at the Board meeting. Based on public comment, the Board decided that 44.3(2)"a"(1) needed to be amended to include the requirement that, in the area of case management, at least 24 hours be earned by the completion of a program in which an instructor conducts the class employing either in-person or live, real-time interactive media. In addition, the Board added a statement to note that 12 hours of the required 36 hours in clinical case management may be obtained by independent study, including on-line instruction.

The amendments were adopted by the Board of Chiropractic Examiners on April 12, 2006.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule **44.3(2)**, paragraph "**a**," subparagraph (1), as follows:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. Beginning with the July 1, 2006, to June 30, 2008, renewal cycle, *at least 24 of these hours shall be earned by completing a program in which an instructor conducts the class in a manner that permits employing either in-person or live or, real-time electronic interaction with the participants interactive media. The remaining 12 hours may be obtained by independent study, including on-line instruction.*

ITEM 2. Amend subrule **44.3(2)**, paragraphs "**c**" and "**d**," as follows:

c. Beginning with the July 1, 2006, to June 30, 2008, renewal cycle, a maximum of 24 hours per biennium will be allowed for independent study.

d c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

[Filed 4/13/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5074B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners amends Chapter 179, "Administrative and Regulatory Authority for the Board of Optometry Examiners," and Chapter 183, "Discipline for Optometrists," Iowa Administrative Code.

The amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4851B**. A public hearing was held on February 21, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 183.5(3) needed to be clarified and that the Iowa Code reference in subrule 183.5(4) needed to be corrected. The Board approved these changes.

The amendments were adopted by the Board of Optometry Examiners on April 13, 2006.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—179.1(17A)** by adding a **new** definition in alphabetical order as follows:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ITEM 2. Adopt **new** rule 645—183.5(154) as follows:

645—183.5(154) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

183.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

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b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

183.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

183.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

183.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

183.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

183.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

183.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 4/13/06, effective 6/14/06]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5088B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners amends Chapter 181, "Continuing Education for Optometrists," Iowa Administrative Code.

The amendments amend continuing education requirements regarding implementation of the substitution of Council on Endorsed Licensure Mobility for Optometrists (CELMO) certification in lieu of proof of attendance at a continuing education program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 2006, as **ARC 4976B**. A public hearing was held on April 4, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Optometry Examiners on April 19, 2006.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

The following amendments are adopted.

ITEM 1. Amend paragraph **181.3(2)"a,"** subparagraph (4), as follows:

(4) *Beginning with the July 1, 2006, biennium, Therapeutic therapeutic* licensees who provide proof of current CELMO certification meet continuing education requirements for ~~that~~ *the* biennium.

ITEM 2. Amend paragraph **181.3(2)"c,"** introductory paragraph, as follows:

c. Required continuing education hours. *Beginning with the July 1, 2006, biennium, Therapeutic therapeutic* licensees who provide proof of current CELMO certification meet continuing education requirements for ~~that~~ *the* biennium. If the licensee does not have current proof of CELMO certification, then the following are required to meet the continuing education requirement in paragraph 181.2(1)"b":

ITEM 3. Amend subrule 181.4(2), introductory paragraph, as follows:

181.4(2) *Beginning with the July 1, 2006, biennium, The* licensee shall provide the following information to the board for auditing purposes or in lieu thereof provide proof of current CELMO certification:

[Filed 4/19/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5089B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners amends Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assistant Examiners," Chapter 326, "Licensure of Physician Assistants," and Chapter 329, "Discipline for Physician Assistants," Iowa Administrative Code.

The amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening; add the requirement for physician assistants to notify the Board to identify the physician assistants' supervising physicians at time of license reactivation; and provide the Board the ability to retain licensure overpayments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4866B**. A public hearing was held on March 8, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Physician Assistant Examiners on April 19, 2006.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [325.1, 326.8(1)"d," 329.3, 329.5] is being omitted. These amendments are identical to those published under Notice as **ARC 4866B**, IAB 2/15/06.

[Filed 4/20/06, effective 6/14/06]

[Published 5/10/06]

[For replacement pages for IAC, see IAC Supplement 5/10/06.]

ARC 5075B**RACING AND GAMING
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby adopts amendments to Chapter 4, "Contested Cases and Other Proceedings," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Item 1 reestablishes a subrule that had been removed by mistake.

Items 2 through 15 update existing rules to correspond with the national uniform rules of racing.

Items 16 through 21 clarify intent, change requirements, or conform to technical compliance standards.

Notice of Intended Action was published in the February 15, 2006, Iowa Administrative Bulletin as **ARC 4873B**. A public hearing was held on March 7, 2006. The only comments received were requests that paragraph 9.6(1)"w" not be rescinded as was proposed in Item 7 of the Notice. In response to those comments, the rescission of paragraph 9.6(1)"w" was not adopted. No other changes from the Notice have been made.

These amendments will become effective June 14, 2006.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 4, 9 to 12] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4873B**, IAB 2/15/06.

[Filed 4/21/06, effective 6/14/06]

[Published 5/10/06]

[For replacement pages for IAC, see IAC Supplement 5/10/06.]

ARC 5086B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 19, 2006, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4975B**.

The Code of Federal Regulations (CFR) was updated in October 2005, and the Department needs to cite the current version in these rules. No changes to 49 CFR, Parts 365-368 and 370-379 have occurred.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective June 14, 2006.

Rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, 2004 2005, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

[Filed 4/19/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5094B**VOTER REGISTRATION
COMMISSION[821]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby rescinds Chapter 4, "Specifications for Voter Registration Data Processing Services Contracts and Approval Procedure for Such Contracts," Iowa Administrative Code.

This amendment rescinds Chapter 4, which is no longer applicable because Iowa Code section 47.7(2)"b" prohibits a county from establishing its own voter registration system.

Notice of Intended Action was published in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4970B**. The Commission received no comments regarding the rescission of Chapter 4. The adopted amendment is identical to that published under Notice.

This amendment will become effective June 14, 2006.

This amendment is intended to implement Iowa Code section 47.7.

The following amendment is adopted.

Rescind and reserve **821—Chapter 4**.

[Filed 4/21/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5095B**VOTER REGISTRATION
COMMISSION[821]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby rescinds Chapter 7, "County Maintenance File Input Specifications," Iowa Administrative Code.

This amendment rescinds Chapter 7, which is no longer applicable because Iowa Code section 47.7 requires each county to participate in the single, uniform, official, centralized, interactive computerized voter registration file defined, maintained, and administered at the state level.

Notice of Intended Action was published in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4968B**. The

Commission received no comments regarding the rescission of Chapter 7. The adopted amendment is identical to that published under Notice.

This amendment will become effective June 14, 2006.

This amendment is intended to implement Iowa Code section 47.7.

The following amendment is adopted.

Rescind and reserve **821—Chapter 7**.

[Filed 4/21/06, effective 6/14/06]

[Published 5/10/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/10/06.

ARC 5093B**VOTER REGISTRATION
COMMISSION[821]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby rescinds Chapter 9, "National Change of Address Program," Iowa Administrative Code, and adopts a new Chapter 9 with the same title.

This amendment outlines the National Change of Address Program and outlines the responsibilities of the State Registrar of Voters and county commissioners.

This amendment was published under Notice of Intended Action in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4967B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 4966B**. The Commission received no comments regarding the amendment. The adopted amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

This amendment will become effective June 14, 2006.

This amendment is intended to implement Iowa Code sections 48A.27(4) and 48A.28(2).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [Ch 9] is being omitted. This amendment is identical to that published under Notice as **ARC 4967B** and Adopted and Filed Emergency as **ARC 4966B**, IAB 3/15/06.

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